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# RESEARCH REPORT

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Accused Persons Remanded to Custody

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# AWAITING TRIAL: ACCUSED PERSONS REMANDED TO CUSTODY

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August 1995

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"The presumption of innocence protects the fundamental liberty and human dignity of any person accused by the State of criminal conduct....It ensures that until the State proves an accused's guilt beyond all reasonable doubt, he or she is innocent. This is essential in a society committed to fairness and social justice. The presumption of innocence confirms our faith in humankind; it reflects our belief that individuals are decent and law-abiding members of the community until proven otherwise."

*Chief Justice Dickinson in R. v. Oakes (1986)*

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## ABSTRACT

Jails and detention centres are the most crowded sector of the prison system. The persons remanded to them while awaiting trial in Ontario represent a third of the total days stay in adult institutions. That number is increasing at a greater rate than the rate of increase of sentenced inmates within provincial jurisdiction. The Monthly Statistics Report of the Ministry of the Solicitor General and Correctional Services for November, 1994 indicated that the average remand count in Ontario increased to the highest level ever, rising to 2,714 or 36 percent of the institutionalized population.

This study reviewed the law that regulates pre-trial custody and release in a number of jurisdictions as well as the research that has evaluated its implementation. Reference was made to a large body of literature that examines whether those accused persons who receive the custodial alternative might be controlled through less intrusive and less costly measures. A parallel literature has examined the results of pre-trial custody on the subsequent judicial process and outcome. This research points out that these consequences are such that every effort should be made to ensure that pre-trial detention be retained only for the most severe cases of risk to the community.

The focus of study was the examination of a number of characteristics of persons who had been remanded to custody including those variables that have usually been associated with risk for pre-trial release. Demographic and alleged offence and arrest details were included in the analysis as were particulars of disposition of the cases six months after the initial interviews took place. A pre-trial release instrument from an American jurisdiction was applied to the sample resulting in the finding that over one third of the sample would have been eligible for pre-trial release in that setting.

The analysis of disposition data showed that 15 percent of the sample received bail or bail supervision or were otherwise released within six months of the interview. Of those who received a custodial sentence, 28 percent were sentenced for a period of shorter duration than the amount of time spent in remand. The offence categories for which this difference most frequently occurred were Break and Enter and Related, Theft /Possession and Possession Drugs.

Recommendations were made for further research that would lead to the creation of a pre-trial release instrument. Such an assessment would enhance judicial discretion in objectively and uniformly balancing risk to the community with individual rights of accused persons.

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## **EXECUTIVE SUMMARY**

Jails and detention centres are the most crowded sectors of the prison system. The persons remanded to them while awaiting trial in Ontario represent a third of the total days stay in adult institutions. That number is increasing at a greater rate than the rate of increase of sentenced inmates within provincial jurisdiction. There is a large body of literature that examines whether those accused persons who receive the custodial alternative might be controlled through less intrusive and less costly measures. A parallel literature has examined the results of pre-trial custody on the subsequent judicial process and outcome. This research points out that these consequences are such that every effort should be made to ensure that pre-trial detention be retained only for the most severe cases of risk to the community.

The focus of this study, conducted within the largest jails and detention centres in Southern Ontario, was the examination of a number of characteristics of persons who had been remanded to custody including those variables that have usually been associated with risk for pre-trial release. Demographic and alleged offence and arrest details were included in the analysis as were particulars of disposition of the cases six months after the initial interviews took place.

### **Key Findings**

#### **Demographics**

- ◇ Less than 50 percent of participants were Caucasian.
- ◇ The median age was 30.
- ◇ Twenty-two percent were born in the Caribbean.
- ◇ The median highest grade completed was 12.

#### **Employment and Income**

- ◇ More than 40 percent indicated that they usually worked full time.
- ◇ Wages were the main source of income for over 50 percent of the participants.
- ◇ Fifty-three percent said that they were unemployed at the time of arrest.
- ◇ Sixty percent did skilled or unskilled manual work.
- ◇ Thirty percent of those employed reported that they had been at the job they held at the time of their arrest for more than 4 years.
- ◇ The median income of the 200 who responded to that question was \$15,000 to \$25,000.

## **Family and Friends**

- Sixty-seven percent reported having no dependents although 57 percent had children and 17 percent had children living with them.
- Only 22 percent reported living alone and spouse or partner were the most frequently reported cohabitants.

## **Accommodation**

- Sixty-eight percent lived in rented accommodation, most commonly in a house or apartment. Less than 14 percent lived in a rooming house or hostel or had no fixed address.
- Almost 40 percent reported that they had lived in the residence that they had occupied at the time of their arrest for more than a year.

## **Health**

- Over 72 percent reported that they were in good physical health at the time of their arrest. The most frequently reported health problem was substance addiction.
- Seventeen percent reported poor mental health and 46 percent said that their mental health had deteriorated since they were remanded to custody.
- Over 15 percent reported that they had received, at one time or another, treatment for drug, alcohol, or psychiatric problems.

## **Arrest Details**

- Only 40 percent of the sample were free and clear of the law when apprehended for their current offence.
- Over 60 percent had been arrested without a warrant.
- Serious violent crimes, break and enter and drug trafficking were the most frequent alleged offences.
- A third reported four previous convictions although a third also reported less than two previous convictions.

## **Show Cause Hearings**

- The most common reason for hearings not being held prior to admission were lack of legal counsel and hearings put over.

- ◇ Over 60 percent of detainees were represented by their own counsel paid for by legal aid.
- ◇ Bail was waived or conditions of bail could not be met by 22 percent of the sample.

### **Impact of Pre-trial detention**

- ◇ The most frequently reported impressions of the impact that pre-trial detention may have were: difficulty in trial preparation, the negative impression that it leaves with the judge/jury and the increased likelihood of a finding of guilt.

### **Impact of Pre-trial Release**

- ◇ Similarly, pre-trial release was perceived to make it easier to prepare for trial and be viewed more positively by the judge/jury and provide an opportunity for image enhancement while in the community.
- ◇ The most frequently reported perceptions as to why pre-trial release was not granted were nature/number of charges/ safety of the public and nature of involvement with the justice system at the time of apprehension.
- ◇ The most frequently reported reason for inability to meet bail conditions was lack of funds or surety.

### **Disposition of Charges**

- ◇ Records indicated that the statuses of 22 percent of the participants had not changed six months after the interviews; 52 percent had all charges disposed; 13 percent had been released at court either on bail, bail supervision or for another reason.
- ◇ Those who had been sentenced spent a median period of 123 days in custodial remand and their median sentence was 304 days. Twenty-eight percent were sentenced for a period of time that was shorter than the amount of time spent in remand.
- ◇ The status of the study participants six months post interview was assessed. Those, who were released on bail, bail supervision, acquittal or other reasons, had spent a median period of 64 days in custodial remand. The most frequently occurring most serious crime categories for which these persons had been charged were Break and Enter and Related Offences, Theft and Possession and Possession of Drugs..
- ◇ There were significant correlation among severity of offence, days in custodial remand and length of sentence.
- ◇ Application of a Pre-trial Release Instrument to the data resulted in 115 participants receiving points sufficient to have made them eligible for consideration for release on recognizance.

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## **TABLE OF CONTENTS**

<b>SECTION I BACKGROUND</b>	<b>1</b>
Introduction	1
Impact of Custodial Remand on Correctional Systems	4
Releasing Accused Persons to Non-custodial Remand Supervision	5
Bail Verification	5
Bail Supervision	6
Accused Persons in Custodial Remand	8
Demographic and Offence Characteristics of Custodial Remands	8
Impact of Custodial Remand on Trial Process	10
Impact of Custodial Remand on Trial Outcome	11
Reducing the Remand Population	11
Objectives of This Study	13
<b>SECTION II METHODOLOGY</b>	<b>14</b>
Selection of Sites	14
Pre-interview Orientation	14
Selection of Participants	14
Number of Participants	15
Development of Interview Schedule	16
Pilot Test	17
Data Entry and Coding	17
<b>SECTION III SURVEY RESULTS</b>	<b>18</b>
Demographic Profile	18
Age and Race	18
Country of Origin	18
Level of Education	19

School and Employment .....	20
Earnings .....	23
Family and Friends .....	23
Marital Status .....	23
Dependents .....	23
Children .....	24
Living Environment .....	24
Accommodation at Time of Arrest .....	24
Perception of Criminality in Living Environment .....	25
Sharing of Accommodation .....	25
Owner of Residence .....	27
Duration at Present Residence .....	28
State of Health .....	28
Physical .....	28
Physical Health Since Custodial Remand .....	28
Mental .....	29
Mental Health Since Custodial Remand .....	30
Treatment for Emotional, Drug and Alcohol Problems Psychiatric Problems .....	30
Arrest and Detention .....	31
Involvement With the Law at Time of Alleged Offence .....	31
Arrest Details .....	31
Show Cause/Bail Hearing .....	32
Legal Representation at Bail Hearing .....	33
Reasons For Custodial Remand .....	34
Perceptions of Reasons for Refusal of Pre-trial Release .....	34
Conditions of Bail .....	35
Rescinding of Bail .....	36
Appeal of Custodial Remand .....	37
Perceived Impact of Pre-trial Detention .....	37
Perceived Impact of Pre-trial Release .....	38
Criminal Charges .....	38
Charges for Which the Accused Was Remanded .....	39
Previous Criminal Activity .....	40
Most Serious Charges in Previous Convictions .....	40
SECTION IV DISPOSITION OF ACCUSED .....	42
Days Spent in Custodial Remand .....	42



Aggregate Custodial Sentences of Offenders Held on Custodial Remand .....	43
Relationship Between Offence Seriousness and Duration of Days on Custodial Remand and Custodial Sentences .....	44
Relationship of Custodial Remand to Risk .....	45
Persons Receiving Bail, Bail Supervision or Acquittal Subsequent to Custodial Remand	45
SECTION V DISCUSSION .....	47
Threats to Validity .....	49
REFERENCES .....	51
BIBLIOGRAPHY .....	55
APPENDIX A      SURVEY OF CUSTODIAL REMAND ADMISSIONS AT SELECTED JAILS AND DETENTION CENTRES .....	61
APPENDIX B      OFFENCE CATEGORIES RANKED BY SERIOUSNESS .....	85
APPENDIX C      LEVEL OF SUPERVISION INVENTORY .....	93
APPENDIX D      EXAMPLE OF PRE-TRIAL RELEASE INSTRUMENT .....	95
APPENDIX E      GLOSSARY OF TERMS .....	97
APPENDIX F      EXAMPLES OF NON -FINANCIAL BAIL CONDITIONS .....	99
APPENDIX G      EXAMPLES OF FINANCIAL BAIL CONDITIONS .....	101
APPENDIX H      CONSENT TO PARTICIPATE IN A STUDY .....	103

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## TABLES

Table 1 Relationships Between Custodial Remand and Demographic Characteristics . . . . .	9
Table 2 Relationship Between Offence Variables and Custodial Remand . . . . .	10
Table 3 Distribution of Sample . . . . .	16
Table 4 Distribution of Ages Within Racial Groups . . . . .	18
Table 5 Country of Origin . . . . .	19
Table 6 Highest Grade Completed By Racial Origin . . . . .	20
Table 7 Distribution of Work and School Activity . . . . .	20
Table 8 Main Sources of Income . . . . .	21
Table 9 Employment Status at Time of Arrest . . . . .	21
Table 10 Type of Occupation . . . . .	22
Table 11 Duration at Job Held at Time of Arrest . . . . .	22
Table 12 Annual Income Prior to Arrest . . . . .	23
Table 13 Dependents of Accused . . . . .	23
Table 14 Contact With Children . . . . .	24
Table 15 Accommodation at Time of Arrest . . . . .	24
Table 16 Perception of Crime Rate in Living Environment . . . . .	25
Table 17 Distribution of Cohabitants . . . . .	26
Table 18 Reasons for Changes in Accommodation from Pre-Arrest to Post-Release . . . . .	27
Table 19 Ownership of Residence . . . . .	27
Table 20 Duration in Residence at Time of Arrest . . . . .	28
Table 21 Changes in Physical Health Since Custodial Remand . . . . .	29
Table 22 State of Mental Health at Time of Arrest . . . . .	29
Table 23 Changes in Mental Health Since Custodial Remand . . . . .	30
Table 24 History of Treatment for Psychiatric Problems . . . . .	30
Table 25 Involvement With Legal System at Time of Alleged Offence . . . . .	31
Table 26 Arrest Documentation . . . . .	32
Table 27 Reasons for Hearing Not Being Completed Before Admission . . . . .	33
Table 28 Representation at Hearing . . . . .	34
Table 29 Outcomes of Hearings . . . . .	34
Table 30 Perceived Reasons for Refusal of Pre-trial Release at Bail/Show Cause Hearing . . . . .	35
Table 31 Conditions of Bail . . . . .	36
Table 32 Reasons Why Not Released on Bail . . . . .	36
Table 33 Perceived Impact of Pre-trial Detention . . . . .	37
Table 34 Perceived Impact of Pre-trial Release . . . . .	38
Table 35 Most Serious Charges for Which Accused Remanded to Custody . . . . .	39
Table 36 Number of Self-reported Incarcerations and Convictions Prior to Current Episode . . . . .	40
Table 37 Most Serious Offences for Previous Convictions . . . . .	41
Table 38 Disposition of Cases @ Six Months Post Admission to Custodial Remand . . . . .	42
Table 39 Distribution of Days Spent in Custodial Remand By Sentenced Persons . . . . .	43
Table 40 Distribution of Days Spent in Custodial Remand By Subsequently Bailed/Released Persons . . . . .	43

Table 41 Distribution of Custodial Sentences .....	44
Table 42 Offences by Aggregate Sentences and Days on Custodial Remand .....	45
Table 43 Distribution of Most Serious Offences of Subsequently Bailed/Released Persons ....	46
Table 44 Points Scored By Present Sample Using Marion County, Indiana Pre-trial Release Instrument .....	47

# **AWAITING TRIAL: ACCUSED PERSONS REMANDED INTO CUSTODY**

## **SECTION I      BACKGROUND**

### **Introduction**

Prior to the enactment of the amendments to the Criminal Code of Canada reflected in the Bail Reform Act of 1971 (amended by the Criminal Law Amendments Act of 1972 and 1976)<sup>1</sup>, too many people were arrested by the police without a warrant instead of being summoned to appear in court (Canadian Committee on Corrections, 1969; Friedland, 1965; McRuer, 1968). Primary among the many reasons for this was the cumbersome nature of the summons process. This procedure made it easier for a peace officer to arrest an accused person than to use any of the sanctioned alternatives. The zeitgeist created by the reports of the Canadian Committee on Corrections (1969) and the McRuer Commission (McRuer, 1968), as well as the seminal work, "Detention Before Trial" (Friedland, 1965) altered thinking about pre-trial detention in Canada. The basic changes in philosophy that arose from these reports were that the alternatives to arrest should be easy to implement and that an arrest should not be made unless it was in the public interest to do so. The Act imposed on the police a duty not to arrest in certain circumstances and a duty to release in certain circumstances.

Consistent with that philosophy, the Criminal Code of Canada now contains a number of provisions for an accused person to remain in the community or to be remanded to custody with or without arrest during the period between apprehension and trial.

Initially, without arresting the accused person, a peace officer may compel his or her appearance in court through a variety of detailed and complex provisions including Appearance Notice, Promise to Appear or Summons. (See Figure 1 for a simplified diagrammatic representation of the pre-trial process.). The variables affecting the decision, as to which provision to employ, include the type of offence, the citizenship and the place of residence of the accused, the involvement of the accused person with the criminal justice system at the time of the apprehension, and the status of the peace officer making the decision. The purpose of these provisions is to avoid the unnecessary arrest and detention of accused persons through the utilization of the least intrusive means for compelling appearance during the pre-trial period.

The provisions are hierarchical by conferring increasing levels of discretion upon progressively senior police and court officers and demand the constant review of detention orders as the accused moves through the police and judicial process.

This report only focusses on those provisions within the Bail Reform Act related to detention within the jurisdiction of correctional services. (See shaded areas in Figure 1.)

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<sup>1</sup> The provisions of the Bail Reform Act have now been incorporated into Part XVI of the Criminal Code.

The Act contains two grounds for the detention of an accused person before trial:

- (a) *the primary ground that detention is necessary to ensure the accused's attendance in court in order to be dealt with according to law; or*
- (b) *if the primary ground is not satisfied, on the secondary ground that the accused's detention is necessary in the public interest or for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or an interference with the administration of justice.*

The secondary ground was initially interpreted as requiring that an accused would likely commit a crime against the person. In the 1976 amendment, the secondary ground was broadened to include the likelihood of committing any crime.

There are two additional unwritten grounds for pre-trial detention that are side effects of the bail process. Even if the primary and secondary grounds for detention do not exist, and the accused may be released under conditions, the conditions required by the court may be beyond the capacity of the accused to comply. The accused may not be able to raise bail or find one or more sureties. An accused may also be remanded to custody for administrative reasons, e.g., to await a decision of the court as to whether custody until the time of trial is necessary or to wait until a condition of bail can be met or until a court ordered psychological examination can be completed.

In most Western jurisdictions, the onus is upon the crown or public prosecutor to provide evidence for the necessity of detention, except under specific circumstances where the onus is on the accused to "show cause" why he/she should be released, e.g., for offences committed while awaiting trial for an earlier offence, where the accused has failed to appear in court or where the accused has breached recognizance.

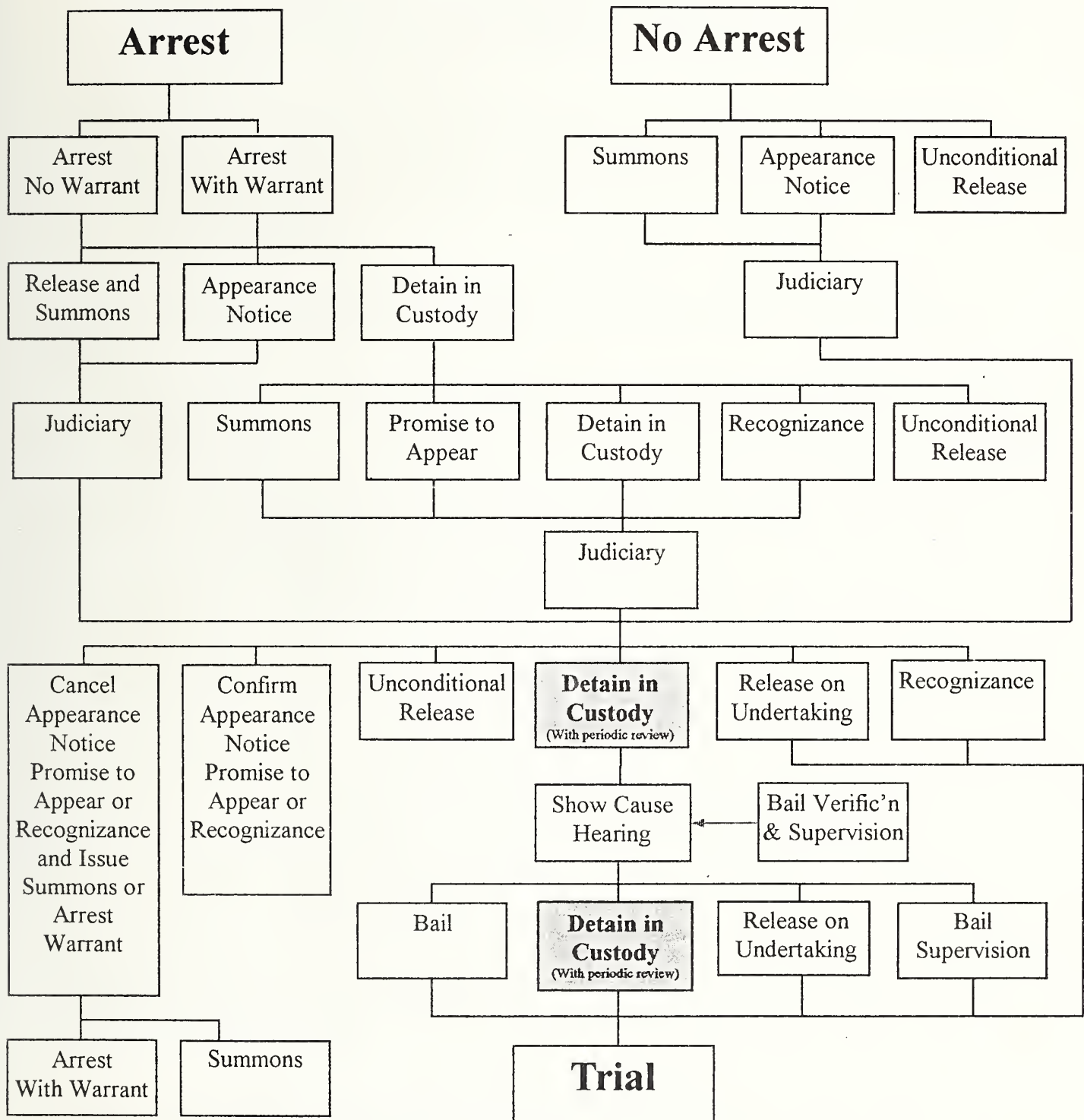
The provisions for custodial remand in Canada are consistent with those in other jurisdictions which base their Criminal Codes on the English Common Law. For example, in the Bail Reform Act passed in Great Britain in 1976, an accused may be remanded into custody:

*if there are substantial grounds for believing that, released on bail, an accused would fail to surrender to custody, commit an offence, interfere with witnesses or otherwise obstruct the course of justice; for the protection of the accused or to ensure the welfare of an accused who is a child, or where the accused is serving a sentence previously adjudicated or where the accused has in relation to the proceedings absconded or breached bail conditions; if the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of making such decisions.*

In the Bail Reform Act passed in the United States in 1984, an accused may be remanded into custody:



Figure 1 Police/Judicial Process From Apprehension to Trial



Population within the purview of this study

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*to assure the appearance of the accused at judicial proceedings; to ensure the safety of the community or of other persons; to provide temporary detention of persons who are arrested while they are on a form of temporary release or who are arrested for violation of the Immigration and Nationality Act*

*when there is probable cause to believe that the person has committed a crime of violence, an offence for which the maximum sentence is life imprisonment or death, an offence for which the maximum term of imprisonment is 10 years or more as prescribed by the controlled substances act or an offence in which a weapon is used during the commission of a crime of violence.*

The primary difference between grounds for pre-trial detention in Canadian law versus that of other Western Countries is the greater specificity of the grounds in the latter. For example, the New York Bail Statute states the following:

*To the extent that the issuance of an order of recognizance or bail and the terms thereof are a matter of discretion,,, an application is determined on the basis of the following facts and criteria....*

- a) *With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:*
    - (i) *The principal's character, reputation, habits and mental condition; and*
    - (ii) *His employment and financial resources; and*
    - (iii) *His family ties and the length of his residence, if any, in the community; and*
    - (iv) *His criminal record, if any; and*
    - (v) *His previous record, if any, in responding to his court appearances when required or with respect to flight to avoid criminal prosecution; and*
    - (vi) *If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit to the appeal; and*
    - (vii) *If he is a defendant, the sentence which may be or has been imposed upon conviction*
- (N.Y.S. Rules of Criminal Procedure, 510.30§ 2).*

The Law Reform Commission of Canada has recommended that a listing of specific grounds of pre-trial detention be included in the next amendment of Section XVI of the Criminal Code. (Law Reform Commission of Canada, 1988)

The present report supplements earlier post bail reform reports (Stanley, 1977; Madden, 1978; Madden, Carey & Ardon, 1980; Madden & Carey, 1982; Madden & Sepejak, 1984; Mahaffy, 1981a, 1981b) that described the characteristics of accused persons detained in custody or in bail supervision in Ontario.

## Impact of Custodial Remand on Correctional Systems

Jails and detention centres remain the most crowded sector of the prison system with spartan environments and high rates of suicide (Lloyd, 1992; Casale & Plotnikoff, 1990). On an average day in November, 1994, there were 2,714 adults in jails, detention centres and remand centres on pre-trial detention in Ontario. This represented 36% of the inmates in adult institutions and a 9.2 percent increase from the same month in 1993. During the same period, on an average day, the number of sentenced offenders in adult institutions increased by 1.5 percent. This differential rate of increase between sentenced persons and persons remanded to custody continues a trend that began several years ago.

The problem of numerous remanded inmates is not unique to Ontario. With the notable exception of Germany and the Netherlands, (Graham, 1990), Western countries have also experienced disproportionate increases in remand populations. During the six-year period ending in 1982 the population of male defendants in England and Wales increased by 50 %, accounting for most of the growth in the prison population between those years (Morgan, 1983); during the five-year period ending in 1988, the remand population in England and Wales again increased by 50% (Morgan, 1992). In Australia, the increases in accused persons remanded to custody far outstripped the overall inmate increases during the 1980's (Walker, 1992). Between 1978 and 1982, the American jail population increased by one-third with 60% pre-trial detainees. In contrast, during the five-year period ending in 1988, while the prison population in the European Community increased by 3% per annum, that in West Germany decreased by 3.5% per annum (Graham, 1990). The greatest contribution to that fall was the 33 percent decline in the remand population.<sup>2</sup>

The disproportionate increase in remand populations due to a variety of causes, including but not limited to, the public pressure to tighten controls on pre-trial release (especially for break and enter, robbery and drug offences), and the increasing delays between apprehension and trial (Pearce, 1987) has led to the development of a variety of pre-trial/post-bail hearing release programmes within Canada and elsewhere. All programmes have some variant of two processes: bail verification and bail supervision.<sup>3</sup>

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<sup>2</sup> In contrast to the situation in Canada, the German police are governed by what is known as the legality principle. This means that police have no discretion in terms of enforcing or not enforcing the law if an offence has been committed. The public prosecutor, on the other hand, has considerable discretionary powers including dismissal and imposition of sanctions such as fines, community service orders, reparation, etc. pass penal orders and can pass penal orders which need to be countersigned by a judge. It is the increased utilization of these powers that resulted in the dramatic decrease in custodial remands. (Graham, 1987)

<sup>3</sup> In Ontario, the terminology describing pre-trial release services is Bail Verification and Supervision. In other jurisdictions a variety of terms have been used to describe essentially the same processes e.g. Pre-trial Screening and Supervision, Pre-trial Release, Supervised Pre-trial Release and Pre-trial Services although the latter may also include pre-trial diversion. (Austin, Krisberg & Litsky, 1985; Henry, 1991)



**Releasing Accused Persons to Non-custodial Remand Supervision**

The main justification for remands in custody - that the offender is at risk of absconding - has considerably less credibility than it once had. Research has shown that the problems of wilful failure to appear at required court proceedings and rearrest for additional offences have been exaggerated. In a study of the development of policy guidelines for bail, of "90% of accused persons who gained release before adjudication, 12 percent wilfully failed to appear (FTA) and 16% were rearrested for new crimes". (Goldkamp & Gottfredson, 1985). In a study of the implementation of bail guidelines in three American jurisdictions, similar results were obtained. (Jones & Goldkamp, 1991). In Dade County, Florida, 6 percent of defendants gaining pre-trial release were rearrested and 11 percent failed to appear at their trial. Further, no relationship has been found between pretrial crime or "failures to appear" and the seriousness of the charges for which the defendant was arrested (Goldkamp and Gottfredson, 1988). This evidence to the contrary, the percent of defendants given pre-trial release has been smaller in Ontario, than in many European and American jurisdictions (Graham, 1990; Pfeiffer (1988).

In Ontario, pretrial services (Bail Supervision and Bail Verification Programme) were initiated on a project basis without statutory provision in 1979<sup>4</sup>. (Madden, 1978; Madden, Carey et al., 1980; Madden & Carey, 1982; Mahaffy, 1981a, 1981b).

The Bail Verification and Supervision Programme contracts with private agencies to assist the courts in pre-trial release decisions for persons lacking cash bail or surety who would otherwise be detained in custody chiefly on primary grounds. The assistance provided is twofold:

**Bail Verification**

Information is gathered by private agency bail workers under contract to the Ministry of the Solicitor General and Correctional Services on behalf of consenting accused persons, after arrest and police detention, to facilitate bail decisions (both financial and non-financial) based on the fullest knowledge available. Information is collected, verified over the phone with an acquaintance or relative of the defendant or other knowledgeable person and presented to the crown prosecutor, the defence and the judge/justice of the peace regarding:

- stability of residence,
- family ties and relationships in the community,
- employment/educational history and status,
- financial resources and means of support,

---

4

The lack of recognition in law of this alternative to detention continues.

- physical and mental condition, including abuse of drugs or alcohol,
- identity of references who could verify information and assist in complying with conditions of release,
- prior criminal record and history of delinquency,
- prior record of FTA and compliance with conditions of release, and
- names of potential sureties<sup>5</sup>.

This is designed to facilitate the judicial decision at the show cause hearing as to whether pre-trial release or detention of the accused person is warranted and, if the former, what conditions should be applied..

### **Bail Supervision**

Professional community supervision of the accused person is offered involving regular reporting to the supervising agency or residing in a bail residence run by the agency as one of the conditions of release for accused persons unable to meet monetary/surety release conditions avoiding incarceration of an accused person whom the court deems suitable for release to the community until a final disposition has been reached by a court. Other conditions may include maintaining a residence, a job, drug or alcohol treatment and so on.

Screening of appropriate bail supervision candidates - too risky to release on their own recognizance but who constitute good pre-trial release risks if provided appropriate levels of supervision, control and services - is a co-operative decision-making process involving the bail worker, prosecutor, defense counsel and the judiciary.

During its initial year of operation within four communities, bail verifications had been conducted on a total of 1,905 accused persons and 629 had been placed on supervision as a condition of their pre-trial release. On an average day in November 1994, there were 1,592 accused adults monitored by the Bail Supervision Programme, an increase of 0.8 percent over November 1993.

The most common indicators of the success of Bail Verification and Supervision programmes have been the FTA and the arrest rates. The former determine whether the program has met the first ground for detention effectively; the latter reflects success in meeting the second ground objectives. The most recent studies have shown an overall FTA of 10 to 24 percent. (Austin et al., 1985; Henry,

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<sup>5</sup>

Much has been written about the many types of schemes used in the field to sort accused persons - objective point scales, subjective schemes or a blend of the two (Eskridge, 1983; Fiddes & Lloyd, 1990; Fleming, 1982; Goldkamp, 1985; Goldkamp & Gotfredson, 1985; Jones & Goldkamp, 1991; Mair, 1988; Lloyd, 1992). The Ontario programme uses a subjective, non-numerical, assessment procedure although work has been done towards the development of an objective scale (Morris, 1982).

1991). In an Ontario study (Madden et al., 1980), 22% of the sample failed to appear at court; however 52 percent had at least one infraction serious enough to lead to legal action. Those variables most highly related to success were employment status, criminal history, legal status and drug use. In an addendum to the initial report (Madden & Carey, 1982), 23 percent of the sample were charged with failure to appear at court and 50 percent had at least one form of infraction during their bail release period which led to legal action. Variables associated with successful bail supervision, in addition to those identified in the initial study, were age, marital status, living arrangements, education, reporting conditions and drug use. The studies showed no impact of the Bail Verification and Supervision Programme on the numbers remanded into custody within the project areas. No data was presented on the impact of the programmes on the number of defendants released on bail in the project areas. This would have been an indicator of the utilization of Bail Supervision as a judicial vehicle for placing a larger number of accused persons under social control or "widening the web".. Soft data arising from interviews with judges, (Jackson, 1982), provides some evidence that, to some extent, this may be one of the by-products of the programme. Judges perceived the programme as suitable for charges related to minor offences only and therefore limited in its application. In some respects this might be expected given the tenor of the times. The way that the bail supervision programme is utilized is inevitably affected by the public's view of release on bail, especially in the case of high profile cases evoking sympathy or outrage. Within this context, it is not surprising that the judiciary would turn to the bail supervision programme to place controls on those who might otherwise have been released on their own recognizance and not utilize it as a vehicle for the release of persons charged with serious crimes who might normally not have been released.

Studies in other jurisdictions have shown dramatic impacts of pre-trial services on both judicial decision making (the bail verification component) and as a consequence the number of accused persons remanded to custody through enhanced numbers receiving bail and participating in the alternative bail supervision programmes. Sherwood-Fabre (1987) in a study of U.S. courts demonstrated not only no increase in pre-trial misconduct, (FTA or committing a crime while on pre-trial release), but also a greater compliance by judges to statutes that mandate their consideration of factors in bail decision making which they often had previously ignored.

Fiddes & Lloyd (1990) found that, in Great Britain, providing bail information on defendants increased their chances of being bailed. This was claimed to result from "the effect of the information on the Crown Prosecution Service decision whether or not to oppose bail, but also seems to be due to a more independent effect on magistrates' decisions." In other words, magistrates now had a flow of information independent of police sources. "Police officers are not neutral nor is it reasonable to expect them to be. They are protagonists in society's struggle against crime. In the eyes of many police officers all persons whom the police prosecute are guilty and the experience of being arrested and spending time in custody pending trial is a punishment justly deserved." (Friedland, 1965)

Bail information schemes have been shown to save the criminal justice system a considerable sum of money. Four schemes in England and Wales had a lower per diem than the per diem of incarceration. Such programs "grease the wheels of the court machine" ensuring that remand decisions are made without the usual delays resulting in financial benefits and reductions in the



workload of the courts (Mair, 1988; Stone, 1988). Finally since bailed defendants are less likely to receive custodial sentences or receive custodial sentences of lesser duration than defendants remanded to custody the correctional costs are further reduced (Hedderman, 1991).

### **Accused Persons in Custodial Remand**

Accused persons who are remanded to custody should be those shown by the crown prosecutor to be high risks for absconding or committing criminal offences or otherwise acting while awaiting trial or whose continuance in the community would be against the public interest or, under the reverse onus provisions, those who have violated conditions of interim release, or who are not normally residents of Canada or who have committed serious offences, e.g. murder, and who have failed to provide sufficient reasons as to why they should not be detained. The few studies that have been conducted on this population have tried to identify characteristics of accused persons that may be correlated with custodial remand. As well, studies have demonstrated the differential impact of pre-trial custody on the judicial process and trial outcome.

This section will examine the literature on:

- the demographic and offence characteristics of remands to custody
- the effects of pretrial custodial remand on the trial process
- the effects of pretrial custodial remand on trial outcome

### **Demographic and Offence Characteristics of Custodial Remands**

There is a substantial body of recent evidence on the characteristics of offenders who are good and poor bail risks. National studies in Great Britain (Henderson and Nichols, 1992; Morgan, 1983, Morgan, 1990a), have repeatedly shown that "males, those aged between 17 and 20 years, those charged with burglary or with theft of or from a vehicle" were most likely to offend on bail. Those least likely to offend were "females, those aged 30 and over, those on bail for an offence of violence, and those with no previous convictions" Those offending while on bail have consistently represented 10 to 12 percent of those released.

In Morgan and Pierce (1988) and Morgan (1990a, 1990b), high risk defendants consisted of those who:

- "were already on bail on another charge when they were arrested for the current offence;
- after being remanded on bail, failed to appear at court;
- and those who did not fit into any of the above, but had no fixed abode."

These represented 66 percent of those remanded to custody and showed chances of being remanded to custody of between 57 and 81 percent.

The low risk group showed chances of being remanded to custody between 3 and 27 percent. The most important variable in the decision to remand into custody for the low risk group was the seriousness of the offence.<sup>6</sup> The custody rates were highest for those charged with burglary and lowest for those charged with theft, with rates for defendants charged with violence or fraud/forgery falling between. Half of those in the low risk group were later released on bail.

There is a singular recent study on the characteristics of accused persons remanded to custody in Ontario (McCallum, 1985). The relationships found between remand and demographic and offence characteristics are found in Tables 1 and 2 respectively. Unfortunately, in the McCallum study, there is no indication of the extent to which individuals in the sample participated in the Bail Verification and Supervision Programme which had been in operation for two years before the data for this sample were collected.

Table 1 Relationships Between Custodial Remand and Demographic Characteristics <sup>7</sup>		
Dependent Variable	Independent Variable	Relationship
Length of stay in custodial remand	Gender	Males Average of 17.7 days Females Average of 8.8 days
<i>Remanded to custody</i>	Employment status	In theft offences, those employed not remanded to custody
Length of Stay in Custodial Remand	Age, Employment Status, Use of Alcohol	No relationship

<sup>6</sup> This is invariably the case when judges rely exclusively on information provided by the prosecutor and the defence attorney without the independent opinion of a bail verification service (Ebbeson & Koneeni, 1975)

<sup>7</sup> Except for italicized variable which is taken from Morgan (1990a), all variables were reported by McCallum (1995)

**Table 2 Relationship Between Offence Variables and Custodial Remand<sup>8</sup>**

Dependent variable	Independent Variable	Relationship <sup>9</sup>
Length of stay in remand	# prior sentenced admissions	Significantly Positive
Length of stay in remand	Length of previous sentences	Significantly Positive
Length of stay in remand	Seriousness of offence	Significantly Positive
Remanded in custody	Seriousness of offence	Positive: e.g. burglary fraud/forgery or offences of violence
Remanded in custody	Seriousness of offence	Positive: e.g. weapons & assault offences
Remanded in custody	Prior admissions	Significantly Positive
Remanded in custody	Prior remand admissions	Significantly Positive
Remanded in custody	Length of prior sentences	Significantly Positive
Length of stay in remand	Stayed release conditions or detention order	Significantly Negative
Disposition of case	Release conditions or detention order	Those who were ordered into detention had their cases disposed of sooner than those who had release conditions set

### Impact of Custodial Remand on Trial Process

Incarceration prior to trial makes preparation of the defendant's case more difficult. The defendant's lawyer must come to him, consuming expensive legal resources and time. The defendant's ability to locate and to convince witnesses to testify in his defence, to gather evidence, to establish an alibi etc. is limited (Schlesinger, 1986).

An incarcerated accused cannot earn money to retain private counsel, to pay the expense of witnesses or investigators or through the holding of a job or participation in victim compensation programmes, to prove his reliability at trial. Studies have shown that the likelihood of a guilty finding is more likely with court appointed counsel (Angel, Green, Kaufman, & Van Loom, 1971).

Finally, a negative impression (perhaps even an impression of guilt), may be left on a magistrate and/or a jury when a defendant, whose personality and morale has been adversely affected by

<sup>9</sup> Where relationships are indicated as significant, the p-value is less than or equal to 0.05.



"jailhouse depression", comes into the court from a stairway leading to cells, under guard, wearing prison clothes or the clothes in which he was arrested, sits in a caged part rather than body of the court until his case can be heard and remains in close custody while his case is heard. Under those conditions, the magistrate/jury suspects that the accused is in custody because bail was refused owing to a bad prior record or that bail was breached or that the person is guilty of the crime for which he has been charged. All of these actual and imagined perceptions prejudice the accused in the eyes of those who are to make a decision regarding his guilt or innocence and if found guilty the sentence to be imposed.

### **Impact of Custodial Remand on Trial Outcome**

Many costs of detention before trial are tangible and measurable. In his classic study of bail procedures in the Toronto Magistrate's Court in the early 1960's Friedland (1965) found that a person detained prior to trial was more likely to be convicted of the offence for which he was charged and more likely to receive a custodial sentence than a bailed matched counterpart. The study suggested that a magistrate may be less hesitant to send such a person back to jail than to send him there initially. Further, the accused who is not in jail, has not had his links to the community broken, has not lost his job, and is therefore able to argue more effectively for a suspended sentence than the person in custody. For both summary and indictable offences, accused stand a greater chance of being convicted when coming into court in custody and of receiving more severe dispositions even when comparing cases in which bail was offered, and regardless of number of previous convictions (Hedderman, 1991; Koza & Doob, 1974-75). A number of American studies have come to the same conclusion: fewer bailed offenders are found guilty, fewer guilty are incarcerated and those incarcerated are given shorter sentences than their equivalent accused persons (prior record, weight of evidence, quality of counsel, family situation and employment held constant) who are detained prior to trial (Angel et al., 1971; Wheeler, 1982; Neubaum & West, 1982). Finally, one study indicates that accused persons not granted bail, may be more likely to make plea bargains (Note, 1958).

### **Reducing the Remand Population**

As indicated earlier, the number of persons remanded to custody and the duration of pre-trial committal has been increasing in most jurisdictions. Many attempts have been made to stem the flow including narrowing the criteria and shifting the onus for custodial remand, placing limits on the amount of time that a person may be held pre-trial by expediting trials, providing magistrates with more information for decision making, implementing programs to divert defendants to other forms of remand supervision, providing police with additional powers of release, providing prosecutors with additional powers of release and sentencing and diversion powers, altering public perception of remands to the community, etc.

For example, in order to effect the dramatic declines in the remand population in West Germany a number of shifts were necessary, both paradigmatic and operational (Graham, 1990). These included:

- an ideological shift in thinking by practitioners within the criminal justice system and particularly by judges coupled, with wide publicity, resulting in a ground swell of opinion against the use of pre-trial detention,
- a reduction in the number of cases brought to trial with the enhanced use by public prosecutors of alternatives such as dismissal of cases on the grounds that judicial disposition is unnecessary, imposition of sanctions, including fines, community service orders and reparation,<sup>10</sup>
- with less pressure on the courts, speedier trials for those accused persons for whom an alternative procedure could not be implemented, and
- a reduction in credibility for the main justifications for custodial remand namely the risk of an offender absconding and the risk of pre-trial crime.

A considerable body of empirical research has been produced in support of the last statement. Ewing (1985) has compiled studies that show that pre-trial detention yields a high false positive rate. Limiting pre-trial detention only to serious or violent crimes would result in a false positive rate "in the 50 to 60 percent range". Requiring a showing of probable cause would produce false positive rates in approximately the same range. Requiring a court to consider a series of factors such as criminal history, prior multiple adjudications and the present charge of an "aggressive crime" would still "prove incorrect almost 50 percent of the time."

Further, in other jurisdictions, legislation mandating speedier trials has been enacted. In the U.S.A. the Speedier Trials Act has had the effect of reducing the mean time spent before disposition by significantly constraining the duration of longer cases (Garner, 1987). In Great Britain, the Prosecution of Offences Act 1985 applied time limits to specified stages of criminal proceedings also with the greatest impact being on the waiting times in custody for the longest cases (Henderson, 1991).

In terms of enhanced use of Bail Verification and Supervision, the literature suggests that four groups may be targeted for expanded programs that would cost effectively reduce their numbers in custodial remand. The first consists of those persons who are only remanded because they have no fixed address. In Morgan and Pierce (1988), this group formed 16 percent of those remanded to custody. Bail hostels including drug and treatment programs, where appropriate, may be the answer in such cases. Over 111 such facilities are provided in Great Britain to defendants on conditional bail by both the voluntary sector and the probation service<sup>11</sup> in Great Britain. Participation in a

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<sup>10</sup> In Canada, the alternative measures section of the Young Offenders Act and recent amendments to the Criminal Code (Bill C-41) allow alternative measures for young and adult offenders respectively.

<sup>11</sup> See Lewis and Mair (1988) for a description of bail hostels, their operation, rules and control, acceptance and continuance criteria and characteristics of residents.



rehabilitation programme would have the positive side effect of placing the accused person in a more favourable position during adjudication reducing either the likelihood of incarceration or the length of sentence that might otherwise be imposed. There is a danger, however, as in the case of bail supervision, of bail hostels being used to house accused persons who would otherwise have been bailed in the community and not for those who would otherwise be remanded to custody (Pratt & Bray, 1985; Lewis and Mair, 1988). Data from Ontario's Bail Verification and Supervision Programme suggests that not to be the case. Clients of the Supervision programme had more personal problems than those released on their own recognizance (RORs) but less than detainees, less community support and strength than either RORs or detainees and more criminal justice history than RORs but less than detainees (Morris, 1982).

The second group of persons are those who are initially remanded in custody and then granted bail or other form of release. It is likely that such persons may be remanded to the community at the show cause bail hearing if sufficient information related to level of risk is available at the time of the first remand decision (Fiddes & Lloyd, 1990). There is no research available to demonstrate to what extent Ontario's Bail Verification Programme effectively performs that function.

A third group could include those defendants who have been targets for custodial remand but who may succeed when given bail under the condition of electronic monitoring, as an alternative to the usual forms of bail supervision, although such conditions have been problematic in other jurisdictions (Maxfield and Baumer, 1990). They argue that the only reward for pre-trial participants was the approaching trial and sentencing.

Finally, there are those defendants who do not meet the first three criteria, but who, under an objectively determined, jurisdictionally appropriate set of guidelines, would be assessed as being of a sufficiently low risk for absconding or being re-arrested for a subsequent offence to be released prior to their trial(s).

### **Objectives of This Study**

In addition to reviewing the literature related to accused persons remanded to custody and the programs that have evolved directed at safely reducing the number of individuals so incarcerated, the study was designed to:

*describe the demographic and offence characteristics and dispositions of a sample of Ontario's remanded population with a special emphasis on those variables associated with low risk for pre-trial release.*

## **SECTION II      METHODOLOGY**

### **Selection of Sites**

Six Detention Centres were selected to conduct the interviews of individuals remanded into custody. In order to limit travel and accommodation costs, the Steering Committee included only the five jails, detention centres and remand units with the largest days stay of remanded persons in close proximity to Metro Toronto plus the Elgin-Middlesex Detention Centre in London Ontario. Although the results may not be generalizable to the entire remand population generally and the Northern remand population, in particular, cumulatively these institutions, which face perennial overcrowding, account for over 50% of the total remand days in Ontario. The sites participating in this study were:

Metro Toronto East Detention Centre  
Metro Toronto West Detention Centre  
Toronto Jail  
Maplehurst Correctional Centre Remand Unit  
Hamilton-Wentworth Detention Centre  
Elgin-Middlesex Detention Centre

### **Pre-interview Orientation**

The superintendent at each facility was sent an information package containing relevant Ministry correspondence, an excerpt from the proposal and a letter from the consultants introducing the project and explaining the interview requirements at each site. This package was followed up with a telephone call to arrange a date and time to begin the interviews.

Most often, one half-day was required at each site to become familiar with security protocol, to obtain an overall orientation to the Detention Centre and to determine the most efficient procedure for selecting the random sample of inmates at each site.

### **Selection of Participants**

This process varied slightly between Detention Centres. However the key elements remained the same at each site and are summarized here.

Based on the total required sample by site, the number of interviewers, and the time made available to the interviewers by the sites, a daily, random sample of the active remand files in the institution was developed on each day that the interviewers were present. The interviewers over-sampled each day in anticipation of refusals or inmates who were unavailable or who were not sufficiently literate

in English<sup>12</sup>.

A list was developed for each interviewer with the inmate's name, location and OMS number. At one location, (Metro East DC), Records Department staff generated the random sample for the interviewers utilizing the same protocol.

Forty-two inmates refused to be interviewed. The reasons for refusal varied. In all instances, inmates were approached by the guard and told that someone wanted to see them. The amount of information given to the inmates by the guards about the reason for the request varied. The interviewers understood that the reasons for refusal varied and included involvement in other activities and lack of interest.

Six refusals took place at the time of explanation of the interview and consent. Refusal to participate at this point was most often a concern relating to the individual's case and his concern about sharing information related to his case

Six individuals were unable to participate as a result of difficulty in understanding English. Of the six individuals, 4 were of Asian descent and 2 were of Middle Eastern descent.

### **Number of Participants**

The sample size for each site was developed based on the total number of remanded individuals at each location<sup>13</sup>.

The total number of individuals interviewed at each site is shown in Table 3.

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<sup>12</sup> This method of selection resulted in the undersampling of short term custodial remands. The probability of not including a person because of non-availability for an interview due to a court appearance increased with the amount of time spent in remand prior to trial or a bail hearing that resulted in pre-trial release.

<sup>13</sup> The Steering Committee limited the study to 300 participants. These were apportioned to the sites on the basis of the the total number of remands on the day that the apportionment took place.

**Table 3 Distribution of Sample**

Location	Number	Percent
Toronto Jail	82	27.0
Metro Toronto East Detention Centre	58	19.1
Metro Toronto West Detention Centre	71	23.4
Hamilton-Wentworth Detention Centre	41	13.5
Maplehurst Correctional Centre Remand Unit	26	08.6
Elgin-Middlesex Detention Centre	26	08.6
<b>TOTAL</b>	<b>304</b>	<b>100.2</b>

All interviews took place between February 17 and March 11, 1994. Interviews were conducted by two partners from Barklay Resources and four specifically trained interviewers.

### **Development of Interview Schedule**

The interview schedule was developed to support the purposes of the study (Appendix A). The data elements that were used to describe the population of accused persons remanded to custody included the usual demographic and offence variables with an emphasis on the capture of those variables commonly associated in the literature with the determination of suitability, or lack thereof, for pre-trial release as described in the opening section. The interview also delved into other issues such as personal health and the accused's understanding of the impact of custodial remand on the trial process and outcome.

The four interviewers were given a half-day training course in order to ensure precision and conformity in conducting the interviews not in terms of "stimulus equality" but in terms of "stimulus equivalence". That is, the interviewers were not expected to parrot an exact interview schedule text in the identical manner but to ensure, by following the item descriptions and annotations and using their best judgement as to appropriate wording, that any remanded person's understanding of a question in the survey was the same as the understanding of every other remanded person interviewed by any of the interviewers. Interviewers devised their own probes, where necessary, to ensure that they correctly obtained all of the information required.

At the outset, to further enhance inter-interviewer consistency in conducting the interview and categorizing responses, each interviewer was paired with a second for a minimum of two interviews.



**Pilot Test**

The schedule was pilot tested with 10 remanded persons at the Toronto Jail. On the basis of anecdotal feedback from the interviewers regarding problematic items, the schedule was revised. Additional changes were made on the basis of client feedback. Post-pilot Version 2.0, which was administered the entire sample, appears in Appendix A.

**Data Entry and Coding**

The data was keyed into a spreadsheet (Quattro Pro for Windows) and subsequently imported into SPSS for Windows. Data on the status of the accused six months after the initial interview was obtained from the Ministry's Offender Management System.

## SECTION III SURVEY RESULTS

This section presents the main findings of the survey. It is based on interviews with 304 respondents in six remand facilities. The final distribution by facility appears in Table 1. It is important to note that all data was self-reported and not verified with independent secondary sources with the exception of criminal charges which were verified through the Ministry's Offender Management System,

### Demographic Profile

#### Age and Race

The mean age and standard deviation were 30.1 and 8.1 years respectively. The median age was 29.6 years.

Almost half of the sample was caucasian (49.3%). The most frequently represented racial minority was Black (30.6%). The remaining 20.1% were other racial minorities, e.g. Asiatic and Aboriginal, or unknown. There was no difference between races in average age.

**Table 4 Distribution of Ages Within Racial Groups**

Age Range	Black	Caucasian	Other Racial Minority/Unknown	Total	Percent
19 - 24	25	34	12	71	23.4
25 - 29	23	25	15	63	20.7
30 - 34	31	42	13	86	28.3
35 - 39	10	25	6	41	13.5
Over 40	4	24	8	36	11.8
Missing			7	7	2.3
<b>Total</b>	<b>93</b>	<b>150</b>	<b>61</b>	<b>304</b>	
<b>Percent</b>	<b>30.6</b>	<b>49.3</b>	<b>20.1</b>		<b>100.0</b>

#### Country of Origin

The majority of remands were born in Canada (52%). The next most frequent areas of origin were Caribbean (22%) and Europe (8.5%).

**Table 5 Country of Origin**

	Number	Percent
Canada	158	52.0
Caribbean	67	22.0
Europe	26	8.5
Africa	17	5.6
Asia	15	4.9
South/Central America	11	3.6
Other	10	3.3
<b>TOTAL</b>	<b>304</b>	<b>100.0</b>

**Level of Education**

The median highest grade completed through to grade 13 was grade 11. There was no difference in median highest grade between remanded individuals of different racial origins. The distribution of highest grade completed for Caucasians and racial minorities is shown in Table 6. There were no differences between Caucasians and racial minorities in post secondary school studies. A total of 137 remands (52.3% of racial minorities and 46.7% of Caucasians) had some form of post high school educational experience.

**Table 6 Highest Grade Completed By Racial Origin**

Highest Grade Completed	Caucasian	Racial Minority/ Unknown	Total	Percent
Less than 8	7	6	13	4.3
8	5	5	10	3.3
9	13	9	22	7.2
10	37	24	61	20.1
11	36	21	57	18.7
12	37	48	85	28.0
13 or more	14	14	28	9.2
Unknown	1	27	28	9.2
<b>Total</b>	<b>150</b>	<b>154</b>	<b>304</b>	
<b>Percent</b>	<b>49.3</b>	<b>50.7</b>		<b>100.0</b>

### School and Employment

Remands were asked a number of questions regarding the way they spend their time at work and/or at school. The modal activity was full time work. The distribution of work and school activity appears in Table 7.

**Table 7 Distribution of Work and School Activity<sup>14</sup>**

	Number	Percent of Sample
Work Full Time	128	42.1
Work Part Time	93	30.6
Unemployed	71	23.4
Attend School Full Time	24	7.9
Attend School Part Time	15	4.9

<sup>14</sup>

Since participants could indicate more than one category of activity, the total exceeds 304.



The modal pattern of employment from the beginning of the remands working life was "usually employed". Of those who experienced unemployment from time to time, 50% looked for work on those occasions.

The modal source of income reported was from wages (56.3%). This was followed by welfare (29.3%) and illegal activities (12.2%). The distribution from other sources appears in Table 8.

<b>Table 8 Main Sources of Income<sup>15</sup></b>		
	Number	Percent
Wages	171	56.3
Welfare	89	29.3
Illegal	37	12.2
Spouse or Partner or Parents	35	11.5
Other (Unemployment Insurance, Disability and Unknown)	58	22.3

At the time of arrest for the current episode, the majority of remands were unemployed (53%). The frequency of other employment statuses at the beginning of the current episode are shown in Table 9.

<b>Table 9 Employment Status at Time of Arrest<sup>16</sup></b>		
	Number	Percent of Sample
Unemployed	161	53.0
Employed	108	35.5
Student	29	9.5
Other	22	7.2

<sup>15</sup> Since participants could indicate more than one source of income, the total exceeds 304.

<sup>16</sup> Since participants could indicate more than one category of employment status, the total exceeds 304.

The modal type of job reported by remands was Skilled Manual (39.1%). The frequency with which other job types were reported appears in Table 10.

<b>Table 10 Type of Occupation</b>		
	Number	Percent
Skilled Manual	119	39.1
Unskilled Manual	62	20.4
Service	20	6.6
Professional/managerial	19	6.3
Sales	14	4.6
Other or No Information	70	23.0
Total	304	100.0

One hundred and twenty-two participants indicated how long they had been employed at the time of their arrest. The median was 22.5 months. Over 45% had been employed for a year or less. The distribution of durations is shown in Table 11.

<b>Table 11 Duration at Job Held at Time of Arrest</b>		
	Number	Percent
Less than 4 months	18	14.8
4 to 9 months	27	22.1
10 to 24 months	25	20.5
25 to 48 months	19	15.6
More than 48 months	33	27.0
Total	122	100.0

The availability of post-trial employment was answered positively by 61.4 percent of those who had pre-arrest jobs either at the time of arrest or shortly prior.

### Earnings

Earnings were transformed to per annum regardless of how provided. The transformations assumed a 40 hour week and work of 52 weeks/12 months per year. The median earnings of respondents was \$23,400. The distribution of annual income for the 203 who responded to this question appears in Table 12.

Table 12 Annual Income Prior to Arrest		
	Number	Percent
Up to \$15,000	38	18.7
\$15,000 up to \$25,000	73	36.0
\$25,000 up to \$40,000	54	26.6
\$40,000 or more	38	18.7
TOTAL	203	100.0

### Family and Friends

#### Marital Status

The majority of participants were not married (56.9%). The second most frequent status was married or common-law (29.3%) with the number in common-law relationships exceeding marital relationships by almost two to one. The remainder were separated, divorced or widowed (24.1%)

#### Dependents

Most of the participants did not provide economic support to anyone (66.8%). The number of persons with each category of dependent is provided in Table 13.

Table 13 Dependents of Accused <sup>17</sup>		
	Number	Percent
None	203	66.8
Children	84	27.6
Spouse/partner	51	16.8
Parents	6	2.0
Siblings	4	1.3

<sup>17</sup>

Since participants could indicate more than one category of dependent, the total exceeds 304.

## Children

A majority of participants had children (57.2%). Few were living with their children (17.1%). The breakdown of the frequency of contact with children appears in Table 14.

Table 14 Contact With Children		
	Number	Percent
Not living with me but I see quite often	64	21.0
Not living with me and that I seldom see	58	19.1
Living with me	52	17.1
No children	130	42.8
Total	304	100

## Living Environment

### Accommodation at Time of Arrest

The distribution of accommodation at time of arrest was bimodal with equal percentages of respondents (39.5%) indicating that they either lived in a single family home/condo/town house and apartment in an apartment building. The distribution of accommodation at time of arrest appears in Table 15 .

Table 15 Accommodation at Time of Arrest		
	Number	Percent
Single Family Home or Town House or Condo	120	39.6
Apartment in Apartment Building	120	39.6
Apartment or Flat in Private Home	22	7.3
Rooming House	17	5.6
No Fixed Address/Hostel/Other	24	7.9
TOTAL	303	100.0

**Perception of Criminality in Living Environment**

The modal percentage of respondents described the environment in which they lived as being a low crime rate area (46.2%) The distribution of perceptions appears in Table 16.

<b>Table 16 Perception of Crime Rate in Living Environment</b>		
	Number	Percent
Low Crime Rate	140	46.1
Average Crime Rate	74	24.3
High Crime Rate	55	18.1
Other or No Information	35	11.5
TOTAL	304	100.0

**Sharing of Accommodation**

Prior to arrest, only 22% of the respondents reported living alone and the highest percentage lived with a spouse or partner (34.2%). Upon release fewer respondents indicated where they might be living with the largest difference occurring in the number of persons indicating that they would be living with a spouse or partner upon release. The distribution of cohabitants appears in Table 17.



**Table 17 Distribution of Cohabitants<sup>18</sup>**

	Intention After Release		Before Arrest	
	Number	Percent	Number	Percent
Spouse or Partner	78	25.7	104	34.2
Parents	78	25.7	72	23.7
Alone	58	19.1	67	22.0
Children	44	14.5	56	18.4
Siblings	46	15.1	47	15.5
Friends	28	9.2	38	12.5
Other Including Grandparents and Other Relatives	26	8.6	31	10.2

Respondents were asked to comment upon the reason for changes in living arrangements between pre-arrest and post-release. The most frequent reason for change, consistent with the drop in cohabitation with spouse/partner was the severing of relationships following arrest with a large number reverting to their parental homes. The distribution of reasons for changes in post-release accommodations appears in Table 18.

<sup>18</sup>

Since categories are not mutually exclusive the total percentage exceeds 100.

<b>Table 18 Reasons for Changes in Accommodation from Pre-Arrest to Post-Release</b>		
	Number	Percent
Starting over in another area	19	18.6
Can't maintain home while in jail	18	17.6
Court recommendation	11	10.8
Break up of relationship	8	7.8
Possibility of deportation	7	6.9
Cohabitant has/will be moving	7	6.9
Moving in with family member or friend	5	4.9
To continue rehabilitation	3	2.9
No longer comfortable at current address	3	2.9
Other or No Information	21	20.6
<b>TOTAL</b>	<b>102</b>	<b>100.0</b>

### Owner of Residence

Only 8.6% of participants lived in a home owned by either themselves or their spouses/partners. The majority rented from a private landlord (55.2%). The distribution of ownership of residence occupied by the accused appears in Table 19.

<b>Table 19 Ownership of Residence</b>		
	Number	Percent
Rent from Private Landlord	168	55.2
Rent from Public Housing	37	12.2
Parents	34	11.2
Accused/Spouse or Partner	26	8.6
Other or No Information	39	12.8
<b>TOTAL</b>	<b>304</b>	<b>100.0</b>

### Duration at Present Residence

The modal duration for length of time in residence occupied at the time of arrest was no more than six months (43%). Table 20 provides the distribution for the sample.

Table 20 Duration in Residence at Time of Arrest		
	Number	Percent
Up to 6 months	125	43.0
7 - 12 months	52	17.9
More than 1 and up to 4 years	64	22.0
More than 4 years	50	17.2
TOTAL	291	100.1

### State of Health

#### Physical

A high proportion of the respondents (72.4%) reported good health at the time of arrest. The modal physical health problem reported by the 36 persons who reported a physical illness was substance addiction (22.2%) followed closely by diabetes. Other less frequently reported problems were respiratory (4), liver (3), gunshot wounds (3) and cardiovascular (2).

Although only 23 persons reported being in poor physical health and 36 described a physical health problem from which they were suffering, 61 or 20.1% of the study participants reported being on medication for a physical health problem.

#### Physical Health Since Custodial Remand

The modal response to the question of change in physical health since the participants were placed in custody was no change. The distribution of responses appears in Table 21.

**Table 21 Changes in Physical Health Since Custodial Remand**

	Number	Percent
Physical Health Has Stayed About The Same	129	42.4
Physical Health Has Deteriorated <sup>19</sup>	105	34.5
Physical Health Has Improved	45	14.8
No Information	25	8.3
<b>TOTAL</b>	<b>304</b>	<b>100.0</b>

**Mental**

The modal state of mental health at time of arrest was reported to be "Good" (60.5%) The distribution of responses appears in Table 22. The most frequently reported mental health problem was anxiety or stress (4.9%)

**Table 22 State of Mental Health at Time of Arrest**

	Number	Percent
Good	184	60.5
Average	66	21.7
Poor		
Anxiety/Stress	15	4.9
Substance Addictions	14	4.6
Depression	8	2.6
Interpersonal Problems	7	2.3
Other	8	2.6
<b>Subtotal</b>	<b>52</b>	<b>17.1</b>
No Information	2	.7
<b>TOTAL</b>	<b>304</b>	<b>99.8</b>

Although 52 persons indicated that their mental health was poor, only 27 were on medication for

<sup>19</sup> Examples given include conditions in detention centre/jail, stress of arrest and detention

emotional problems.

### Mental Health Since Custodial Remand

As might be expected, a higher percentage of persons remanded to custody perceived that their mental health had deteriorated since being remanded than the number reporting physical health deterioration (45.7% and 34.5% respectively). The distribution of changes in mental health is shown in Table 23.

Table 23 Changes in Mental Health Since Custodial Remand		
	Number	Percent
Mental Health Has Deteriorated	139	45.7
Mental Health Has Stayed About the Same	99	32.6
Mental Health Has Improved	40	13.2
No Information	26	8.6
TOTAL	304	100.1

### Treatment for Emotional, Drug and Alcohol Problems Psychiatric Problems

Only 52, 46, and 55 persons reported a history of treatment for drug, alcohol and psychiatric problems respectively. The distribution of the nature of these treatment services appears in Table 24.

Table 24 History of Treatment for Psychiatric Problems						
	Drug		Alcohol		Psychiatric	
	Number	Percent	Number	Percent	Number	Percent
None	252	82.9	258	84.9	249	81.9
Outpatient	24	7.9	28	9.2	29	9.5
Inpatient	19	6.2	13	4.3	20	6.6
Both	9	3.0	5	1.6	6	2.0
TOTAL	304	100.0	304	100.0	304	100.0

Although 71 or 23.4 % of the participants had been charged with an alcohol offence previously, only 54 persons reported having an alcohol problem; 13 of these were receiving treatment for their problem at the time of their arrest.



Although 121 persons or 39.8% of the participants had been charged with a drug offence previously, 72 or 23.7% of the participants reported having a drug abuse problem. Of these fifty-two had received treatment; the modal type of treatment was outpatient therapy. Fourteen were receiving treatment at the time of arrest.

## **Arrest and Detention**

### **Involvement With the Law at Time of Alleged Offence**

At the time that the alleged offence was committed, 183 persons (60.8%) reported that were still involved with the legal system in one way or another as a result of a previous conviction. The frequency distribution of these involvements appears in Table 25.

<b>Table 25 Involvement With Legal System at Time of Alleged Offence</b>		
	Number	Percent
Free and Clear	119	39.1
On Probation	67	22.0
On Bail for Previous Offence(s)	59	19.4
On Parole	22	7.2
In Bail Supervision Programme for Previous Offence	14	4.6
Community Service Order or Other Diversion for Previous Offence	3	1.0
Other	18	5.9
No Information	2	0.7
<b>TOTAL</b>	<b>304</b>	<b>99.9</b>

### **Arrest Details**

Over 60% of the sample were arrested without a warrant. Only 4 were given a Promise to Appear that was later rescinded by the Court. The distribution of the legal documentation under which arrest was made appears in Table 26.

**Table 26 Arrest Documentation**

	Number	Percent
Arrested Without a Warrant	187	61.5
Arrested With a Warrant	89	29.3
Promise to Appear or Recognizance or Summons Rescinded by Court	4	1.3
No Information	24	7.9
TOTAL	304	100

**Show Cause/Bail Hearing**

The show cause/bail hearing was completed prior to the time of admission to the jail or detention centre for 45.7 percent of the sample. The remainder suggested why the delay had occurred. The most frequently mentioned reasons were Lack of Legal Counsel and Putting Over of the Hearing. The complete distribution of reasons for the hearing not being completed appears in Table 27.

**Table 27 Reasons for Hearing Not Being Completed Before Admission**

	Number	Percent
No Legal Counsel	28	17
Hearing Put Over	28	17
Bail Waived	22	13.3
Immigration Review/Hold	10	6.1
Nature of Charge(s)	7	4.2
Breached Bail/Probation/Parole	7	4.2
Time of Arrest	6	3.6
Court Delay	6	3.6
Counsel Not Ready	5	3.0
Police Investigation Incomplete	4	2.4
Detention Order	3	1.8
Arranging Surety	3	1.8
Other	22	13.3
Don't Know/No Reason	14	8.5
<b>TOTAL</b>	<b>165</b>	<b>100.0</b>

### Legal Representation at Bail Hearing

The absence of a defense lawyer was one of the primary reasons for the delay of a bail/show cause hearing. In spite of this 25 hearings (9.2%) proceeded with the accused unrepresented by counsel. When a hearing was held, the majority of persons (184 or 60.5%) were represented by their own counsel paid by Legal Aid. The distribution of types of legal representation appears in Table 28.

**Table 28 Representation at Hearing**

	Number	Percent
Own Counsel Paid by Legal Aid	192	63.2
Own Counsel Paid by Self	33	10.9
No Counsel	25	8.2
Duty Counsel	15	4.9
No Information	39	12.8
<b>TOTAL</b>	<b>304</b>	<b>100.0</b>

### Reasons For Custodial Remand

Of the 241 persons in the sample who reported that their bail/show cause hearings had been completed at the time of the interview, the majority (175 or 72.6%) were remanded to custody as a result of the hearings and the reasons for the decisions were understood by the accused persons. In 3.7% of the outcomes, release pending trial was also not granted but the participants reported that they failed to understand the reason(s) for the decision not to grant pre-trial release. The distribution of all of the outcomes of hearings appears in Table 29.

**Table 29 Outcomes of Hearings**

	Number	Percent
Release Pending Trial Not Granted - Reason Understood)	175	72.6
Bail Waived	28	11.6
Bail Received(Unable to Meet Conditions)	25	10.4
Release Pending Trial Not Granted - Reason Unknown)	9	3.7
Bail Received But Rescinded	4	1.7
<b>TOTAL</b>	<b>241</b>	<b>100.0</b>

### Perceptions of Reasons for Refusal of Pre-trial Release

The most frequently mentioned reasons for the court's refusal of pre-trial release were the nature and number of charges and the safety of the public: 18.2 and 16.2 percent of respondents who had had a bail/show cause hearing respectively. The distribution of perceived reasons appears in Table 30.

**Table 30 Perceived Reasons for Refusal of Pre-trial Release at Bail/Show Cause Hearing<sup>20</sup>**

	Number	Percent
Nature/Number of Charges	55	18.2
Safety of the Public	49	16.2
On Probation or Parole	36	11.9
Nature and Number of Previous Convictions	23	7.6
Likely to Fail to Appear at Trial	19	6.3
Immigration Hold	18	5.9
Present Offence Committed While on Bail	15	4.9
Previous Records of Failure to Appear While on Bail	12	4.0
On Recognizance for Other Charges at Time of Present Offence	8	2.6
Public Interest (to secure or preserve evidence, to prevent crime)	8	2.6
Further Investigations	5	1.6
Serving Sentence or Awaiting Sentencing on Prior Convictions	3	1.0
Federal Inmate	3	1.0
No Fixed Abode or Citizen of Foreign Country	3	1.0
Lack of Local Connections	3	1.0
Other	39	12.9
No Information	3	1.0

### Conditions of Bail

Twenty-seven accused persons or 8.9% of the sample were granted bail but could not meet the conditions. The distribution of conditions for the 27 appears in Table 31.

<sup>20</sup>

Since respondents were asked to provide as many reasons as they felt relevant, the number of reasons exceeds the number of persons who had received their hearings.



<b>Table 31 Conditions of Bail</b>		
	Number	Percent
Recognizance with sureties, without deposit	9	33.3
Recognizance with sureties, with deposit	8	29.6
Recognizance without sureties, with deposit	4	14.8
Bail supervision	3	11.1
Other or no information	3	11.1
<b>TOTAL</b>	<b>27</b>	<b>99.9</b>

The reasons why bail conditions could not be met were varied. The most frequently offered reason was the lack of funds either by the accused or a surety (12 cases). The median bail required from those persons was \$4,000. The frequency of various reasons why bail could not be met appear in Table 32.

<b>Table 32 Reasons Why Not Released on Bail</b>		
	Number	Percent
Lack of Funds	7	25.9
Lack of Surety	5	18.5
Surety Lacked Funds	5	18.5
Parole for Previous Offence Rescinded	4	14.8
Could Not Contact Surety	1	3.7
Surety Not Approved	1	3.7
Other or No Information	4	14.8
<b>TOTAL</b>	<b>27</b>	<b>100.0</b>

### **Rescinding of Bail**

Only four of the participants had bail rescinded. The reasons were: withdrawal of surety, immigration hold and conviction on another offence.

### Appeal of Custodial Remand

Less than 25% of persons in the study indicated that they would not appeal the court's decision to remand them in custody.

### Perceived Impact of Pre-trial Detention

The modal perceived impact of pre-trial detention was the difficulty incarceration presents for preparing a defence (53.3 % of participants). Other high frequency responses were the negative perception that judges/juries have of pre-trial detainees (48.7%) and the perception that a pre-trial detainee is more likely to be found guilty (27.6%). The distribution of all responses of a frequency greater than ten appears in Table 33.

**Table 33 Perceived Impact of Pre-trial Detention**

	Number	Percent
Makes it difficult to prepare for trial	162	53.3
Tends to make the trial judge/jury look at me negatively	148	48.7
More likely to be found guilty	84	27.6
May reduce sentence time	66	21.7
Will have no impact on judge or jury	44	14.5
Get an earlier trial date or otherwise speed up judicial process	34	11.2
May increase sentence time	31	10.2
Slows down judicial process	13	4.3
Tends to make the trial judge/jury look at me positively	12	3.9
More likely to be found not guilty	11	3.6
Disrupts life i.e., job family, children, family	6	2.0
Encourages guilty plea/plea bargaining	6	2.0
Don't know or no information	50	16.4
Other	69	22.7

### Perceived Impact of Pre-trial Release

In the same manner that pre-trial detention was perceived to inhibit one's preparation for trial, so too pre-trial release was perceived to enable preparation for trial (40.8%). Other perceived consequences frequently ascribed to pre-trial release were the opportunity provided for improving one's image (37.5%) and the positive perception by trial judge/jury of persons released prior to trial (33.2%). All the perceived impacts of pre-trial release suggested by more than ten persons appear in Table 34.

**Table 34 Perceived Impact of Pre-trial Release<sup>21</sup>**

	Number	Percent
Makes it easier to prepare for trial	124	40.8
Provides an opportunity to improve image before trial	114	37.5
Tends to make the trial judge/jury look at me positively	101	33.2
Get an earlier trial date or otherwise speed up the trial process	47	15.5
May reduce sentence time	41	13.5
Can delay trial date and possibly result in less severe sentence	33	10.9
More likely to be found not guilty	32	10.5
Will have no impact on judge or jury	23	7.6
Other	14	4.6
Don't know or No information	12	3.9

### Criminal Charges

Criminal charge data was collected during the interview and verified by the Ministry's Offender Management System. Where discrepancies occurred between the two sources of information, the most serious offence reported was entered into the data base. The specific violations were transformed into one of 24 categories of seriousness. (See Appendix B for a listing of the categories and the offences subsumed under each). If more than one offence was committed within an episode, only the most serious was tabulated.

<sup>21</sup>

Since respondents were asked to provide as many perceptions as they felt relevant, the column totals exceed the size of the sample and 100%

### Charges for Which the Accused Was Remanded

The frequency with which each of the 24 categories occurred in the remand in custody episode appears in Table 35. The most serious charges that occurred with the highest frequency were Break and Enter (25.0%), Serious Violent (12.2%), and Trafficking/Importing Drugs (10.2%).

**Table 35 Most Serious Charges for Which Accused Remanded to Custody**

	Seriousness Ranking	Number	Percent
Homicide and Related	1	27	8.9
Serious Violent	2	37	12.2
Violent Sexual	3	8	2.6
Break and Enter	4	76	25.0
Sexual Non-violent	5	23	7.6
Traffic/Import Drugs	6	31	10.2
Weapons Offences	7	15	4.9
Fraud and Related	8	5	1.6
Misc. Against Persons	9	10	3.3
Theft/Possession	10	20	6.6
Assault and Related	11	18	5.9
Property Damage/Arson	12	4	1.3
Possession of Drugs	15	11	3.6
Breach of Court Order/Escape	17	6	2.0
Other Federal Statutes	20	8	2.6
Other		3	1.0
Missing		2	0.7
<b>TOTAL</b>		<b>304</b>	<b>100.0</b>

### Previous Criminal Activity

A large percentage of the participants reported that they had been convicted of a previous offence (78.6%) although Ministry records indicate that 85.5% had actually been convicted in a previous episode. Twenty-eight percent admitted to offences as young offenders. The modal numbers of previous convictions self-reported was four and of incarcerations two or three. The distribution of previous convictions and incarcerations appear in Table 36.

**Table 36 Number of Self-reported Incarcerations and Convictions Prior to Current Episode**

	Incarcerations		Convictions	
	Number	Percent	Number	Percent
One	66	21.7	43	14.1
Two or Three	87	28.6	91	29.9
Four	59	19.4	105	34.5
More than Four	6	2.0	4	1.3
No Previous Incarceration/Conviction/ No Information	86	28.3	61	20.1
TOTAL	304	100.0	304	100.0

### Most Serious Charges in Previous Convictions

The most frequently reported categories of previous offences were Break and Enter (18.1%), Assault and Related (10.2%), and Possession of Drugs (9.5%). The frequency distribution of most serious offences for previous episodes appears in Table 37.



**Table 37 Most Serious Offences for Previous Convictions**

	Seriousness Ranking	Number	Percent
Homicide and Related	1	6	2.0
Serious Violent	2	8	2.6
Violent Sexual	3	1	.3
Break and Enter	4	55	18.1
Sexual Non-violent	5	15	4.9
Traffic/Import Drugs	6	22	7.2
Weapons Offences	7	18	5.9
Fraud and Related	8	10	3.3
Miscellaneous Against Person	9	4	1.3
Theft/Possession	10	22	7.2
Assault and Related	11	33	10.9
Property Damage/Arson	12	5	1.6
Obstructing Justice	14	4	1.3
Possession of Drugs	15	29	9.5
Breach Court Order/Escape	17	20	6.6
Other		8	2.6
No Previous Offence Recorded		44	14.5
<b>TOTAL</b>		<b>304</b>	<b>99.8</b>

## SECTION IV      DISPOSITION OF ACCUSED

The Offender Management System files of the participants were reviewed approximately six months after the initial data was collected in order to determine disposition of the cases. For 66 (21.7%) of the cases pure remand status had not ended either because the case had not been heard or some charges continued to be outstanding. The types of disposition for those for whom pure remand status had ended appear in Table 38.

<b>Table 38 Disposition of Cases @ Six Months Post Admission to Custodial Remand</b>		
	Number	Percent
Sentenced/disposition on all charges	157	51.6
Released at court on bail	23	7.6
Released at court - reason unknown	18	5.9
Sentenced on some but not all charges	14	4.6
Deported	11	3.6
Released by immigration	4	1.3
Other reason for end of pure remand status	11	3.6
No change in status	66	21.7
<b>TOTAL</b>	<b>304</b>	<b>99.9</b>

### Days Spent in Custodial Remand

By far the largest proportion (51.6%) had been sentenced by the time of the file review. Because of a large number of high outliers the average amount of time spent in custodial remand by these persons was 183 days (median= 123 days). Since custodial remand had not ended for 21.7 percent of the cases, the present figures are an underestimate of the final mean and median. The distribution of time spent in custodial remand appears in Table 39.

**Table 39 Distribution of Days Spent in Custodial Remand By Sentenced Persons**

	Number	Percent
0 through 99	63	40.1
100 through 199	39	24.8
200 through 299	21	13.4
300 through 399	10	6.4
Over 399	14	8.9
Missing	10	6.4
<b>TOTAL</b>	<b>157</b>	<b>100.0</b>

Forty-one (13.5%) participants in the study had been released at court, primarily on a form of bail (23 persons), during a court hearing subsequent to the study interview. These persons spent an average of 106 days (median = 64 days) in custodial remand. The distribution of time spent in custodial remand appears in Table 40.

**Table 40 Distribution of Days Spent in Custodial Remand By Subsequently Bailed/Released Persons**

	Number	Percent
0 through 99	13	31.7
100 through 199	10	24.4
200 through 299	9	22.0
300 through 399	5	12.2
Over 399	2	4.9
Missing	2	4.9
<b>TOTAL</b>	<b>41</b>	<b>100.0</b>

### **Aggregate Custodial Sentences of Offenders Held on Custodial Remand**

This section looks at the custodial sentences adjudicated by the courts and compares them to the amount of time spent in custodial remand prior to sentencing. The median aggregate days of custodial sentence was 304 (mean = 857 days); the median number of days spent in custodial remand by these persons was 123 (mean = 183 days). The distribution of sentences is shown in Table 41.

**Table 41 Distribution of Custodial Sentences**

	Number	Percent
0 through 99	29	18.5
100 through 199	20	12.7
200 through 299	21	13.4
300 through 399	7	4.5
400 through 499	15	9.6
500 through 599	4	2.5
600 through 699	6	3.8
700 through 799	9	5.7
Over 799	43	27.4
Missing	3	1.9
<b>TOTAL</b>	<b>157</b>	<b>100.0</b>

### **Relationship Between Offence Seriousness and Duration of Days on Custodial Remand and Custodial Sentences**

As might be expected, a significant correlation exists between the seriousness of the most serious criminal offence and the length of sentence ( $r=.487$ ;  $p\leq.0001$ ). As well, a significant correlation exists between length of sentence and days spent in remand, indicating that those with more serious alleged offences remained in custody longer while awaiting disposition ( $r=.2645$ ;  $p\leq.0001$ ). The distribution of offences by median aggregate sentences and days on pure custodial remand appears in Table 42. In seven of the offence categories, the median days spent in remand exceeded the median sentences imposed. These included weapons offences, fraud and related offences, miscellaneous crimes against persons, theft and possession, assault and related, possession of drugs, and breach of court order/escape.



**Table 42 Offences by Aggregate Sentences and Days on Custodial Remand**

Most Serious Offence	Median Sentence Days	Median Days Remand	N
Homicide and Related	1826	375	13
Serious Violent	838	96	20
Violent Sexual	1642	229	3
B&E and Related	319	127	38
Sexual Non-violent	730	227	11
Traffic/Import Drugs	365	102	11
Weapons Offences	43	89	8
Fraud and Related	15	218	3
Misc. Against Persons	60	90	4
Theft/Possession	107	36	10
Assault and Related	122	160	13
Property Damage/Arson	205	152	4
Possession Drugs	28	67	4
Breach Court Order/Escape	1	13	3
Missing			12
All Offences	305	123	145
<b>TOTAL</b>			<b>157</b>

### Relationship of Custodial Remand to Risk

#### Persons Receiving Bail, Bail Supervision or Acquittal Subsequent to Custodial Remand

In the present sample 41 persons were released at court subsequent to being remanded to custody. They spent an average of 106 days remanded to custody. Table 43 shows the most serious charges of these persons. Had a routinized objective instrument been available to determine risk many of these and other accused persons may have been released on their own recognizance or to other pre-trial release vehicles prior to or early in their incarceration.



**Table 43 Distribution of Most Serious Offences of Subsequently Bailed/Released Persons**

	Number	Percent
Homicide and Related	1	2.4
Break and Enter and Related	7	17.1
Sexual Non-violent	5	12.2
Traffic/Import Drugs	2	4.9
Weapons Offences	1	2.4
Fraud and Related	1	2.4
Assault and Related	4	9.8
Obstructing Justice	1	2.4
Possession of Drugs	6	14.6
Breach Court Order/Escape	3	7.3
Highway Traffic Act	1	2.4
Missing	9	22.0
<b>TOTAL</b>	<b>41</b>	<b>100.0</b>

As indicated earlier a number of jurisdictions both in North America and in Europe have adopted decision enabling protocols to assist in determining if an accused is a suitable candidate for a less costly, reduced supervision alternative to custodial remand. (See example of an instrument used in Marion County, Indiana in Appendix D). In Ontario decisions regarding risk for release on parole or the level of supervision required while paroled are assisted by such an instrument (Level of Supervision Inventory - Appendix C) but no objective instrument has been developed for the determination of risk in decisions related to the various types of pre-trial release conditions.

Had criteria commonly used for making decisions on bail, bail supervision or personal recognizance been used, it is likely that fewer of the current sample would have been detained in custody. In order to determine the impact of the use of such an instrument on the pre-trial disposition of participants in this study, the Marion County, Indiana Pre-trial Release Instrument (Appendix D) was applied to the data. In instances where a data field was not available a conservative decision was made as to point allocation. A total of 115<sup>22</sup> participants achieved scores of four or more (Table 44). These would have been considered eligible for release on personal recognizance. There was no difference in racial

22

These calculations were made using the self-report data that was collected in this study. Verification of the information, as is most usually done prior to making recommendations for alternate pre-trial disposition, may reduce this number.

distribution between the total sample and those who achieved scores of 4 indicating the racial neutrality of the instrument. This also suggests that the judicial decisions to remand to custody those persons who in another jurisdiction may have been released on their own recognizance have not been biased by considerations of race.

**Table 44 Points Scored By Present Sample Using Marion County, Indiana Pre-trial Release Instrument**

	Number	Percent
Ineligible by Exclusionary Criteria	109	36.8
Less than 4	72	24.3
Four	31	10.5
Five	10	3.4
Six	16	5.4
Seven	34	11.5
Eight	10	3.4
Nine	2	.7
Ten	12	4.1
TOTAL	296	100.0

## SECTION V DISCUSSION

This study has raised a number of question regarding decision making in the justice system with respect to the characteristics of accused persons who are confined or not confined prior to their trial. Although those persons who receive pre-trial detention represent a small proportion of persons apprehended for an alleged criminal offence, they do account for a substantial portion of correctional beds and budgets. Although bail and bail supervision programs divert many accused persons from pre-trial custody, the current study, using an American pre-trial release instrument, indicates that more persons may be amenable to less restrictive and less costly pre-trial measures while continuing to ensure their attendance at trial and without posing an unacceptable risk to the public. The study indicates that many of these were eventually released prior to trial. Many more spent more time in custody pre-trial then they would spend after sentencing.

The need to reduce the time between apprehension and trial needs to be examined once again, not only because of the cost of maintaining persons in custody, but also because of the perceived integrity of the system by individuals caught within it, the negative impression of the accused that pre-trial custody has on judge and jury and the impact of such impressions on decision-making. Strategies need to be developed for making the system more sensitive to the need for optimal utilization of

correctional resources. Examples of indicators of successful implementation of such strategies would be a reduction in the number of admissions prior to show cause hearings, a reduction in the number of hearings and trials being put over, a reduction in the number of custodial remands resulting from a lack of funds or sureties, a reduction in the time between appeal of a show cause hearing decision and hearing of the appeal, an increase in the percentage of accused persons in bail supervision programs.

This research indicates that although many of the participants considered custodial remand to have a negative impact on trial outcome, a substantial number perceived positive implications, e.g. reduction in sentence length, speedier judicial process, earlier trial date, positive impression formation, etc. It is important to develop strategies that would alter such unsupported perceptions of accused persons that would lead them to seek continuance in custodial remand.

Over 60 % of participants obtained counsel through Legal Aid. Under this payment arrangement, it is often in the best interest of counsel to delay and obfuscate the judicial process and to maintain clients in custody. Win-win practice standards need to be implemented that would provide incentives for the efficient movement of Legal Aid cases through the courts and into the most appropriate pre-trial placement without thwarting the rights of the accused. When measures for reducing the costs of the Legal Aid Plan are being considered, it is important that they not preclude the efficient movement of accused persons out of pre-trial custody. For example, cost-cutting measures such as limiting criminal lawyers to billing the Legal Aid Plan for only one service a day or eliminating payment to lawyers for pre-trial conferences may have the undesired outcome of lengthening an accused person's stay in custody.

Even if the courts continue current practices with respect to custodial remand, and custody continues to be the only available option for a large number of accused persons, it is clear from the present study that all persons who are remanded to custody do not require the costly maximum security accommodation that is usually afforded them. A variety of "custodial options" should be created to match the presenting risk with the optimal level of "custodial supervision". Since there is always the danger that increasing the range of pre-trial "custodial options" may "widen the judicial net", it is important that any such enhancements be accompanied by well-defined guidelines for their utilization as well as an evaluative research component to determine whether program objectives have been achieved.

The study also raised the question of systemic racial bias with respect to custodial remand. Although 50 percent of the accused persons sampled represented visible minorities, the lack of a significant difference in characteristics that have been associated with risk between the visible minority and caucasion groups suggests that discrimination on the basis of race does not exist at the level of the judicial decision-making. However, the research data does not exist that examines the characteristics of those charged by the police who are released with a summons or an appearance notice or a promise to appear. We do not know how those who are freed by the police and those who are incarcerated before trial differ on any risk related characteristics generallly or racial designation specifically. Nor do we know how those who are released by the judiciary on undertaking, or recognizance, or bail, or bail supervision are different from those remanded to custody.



In order to determine whether biases exist in the system, whether fairness may be enhanced and efficiencies realized with society exposed to a level of risk no greater than can be accepted, it is important that a number of additional studies on persons “Awaiting Trial” be conducted in order to obtain a more complete picture of pre-trial decision making. These would include:

“Awaiting Trial: Accused Persons Released by the Police Prior to Trial”

“Awaiting Trial: Accused Persons Released by the Courts Prior to Trial”

Such research would determine on what characteristics those who are given appearance notices and summonses by the police or who are given bail supervision, or bail, or release on recognizance, or release on undertaking or who are remanded to custody by the judiciary differ. Such studies may:

- ◇ examine the biases that may exist in the justice system and the opportunities that may exist for enhancing consistency and fairness in police and judicial discretion through the adoption of specific grounds for pre-trial options,
- ◇ develop and test the parallel pre-trial instruments that would optimize the number of persons released prior to trial, and
- ◇ develop and test additional community and institutional options that would satisfactorily control the two risks for which pre-trial custody is the ultimate sanction: failure to appear at trial and the perpetration of additional offences.

### **Threats to Validity**

In interpreting the results of this study, the reader is cautioned to consider the following:

- ◇ With the exception of information available on the Offender Management System, the data elements on which the results are based were self-reported by the participants in the study. No verification from the records, correctional staff or persons acquainted with the participant was attempted.
- ◇ The institutions selected for the sample were all in southern Ontario and were chosen for convenience and for containing the cost of the study. Although these institutions account for over 50 percent of the remand population, the remand populations in the large urban centres are unique and the results therefore cannot be generalized to the remaining remand institutions.
- ◇ Because of the way participants in this study were selected, there was a bias against picking persons who had been in custodial remand for a short period of time and whose attendance at a bail hearing was therefore highly likely. Given that there are a large number of persons whose time in custodial remand is extremely short, the average days in remand reported in this study is substantially higher than may have been computed if all remanded persons had the same probability of being included in the sample.
- ◇ Since persons remanded to custody are often moved, for administrative reasons, to jails and detention centres outside of the area in which they were apprehended, the characteristics of the sample in this study does not necessarily reflect the characteristics of alleged offenders in the catchment areas of the institutions selected for this research.

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**APPENDIX A SURVEY OF CUSTODIAL REMAND ADMISSIONS AT  
SELECTED JAILS AND DETENTION CENTRES**

Post-pilot Version 2.1

**Data Collection Form And Interview Guide**

1. Interviewer Code: \_\_\_\_ Surname: \_\_\_\_\_
2. Date of Interview: dd \_\_\_\_ mm \_\_\_\_ yy \_\_\_\_ 3. Time Begun: \_\_\_\_ hrs 4. Time End: \_\_\_\_ hrs
5. Record Number: \_\_\_\_ 6. Admitting Institution: 01 Toronto Jail  
(check one) 02 Metro Toronto East DC  
03 Metro Toronto West DC  
04 Hamilton-Wentworth DC  
05 Maplehurst Remand Unit  
06 Elgin-Middlesex DC
7. Name: Last: \_\_\_\_\_
8. First: \_\_\_\_\_ Initial: \_\_\_\_
9. OMS #: \_\_\_\_\_ 10. FPS #: \_\_\_\_\_

**Admission Details**

11. Arrest date: dd \_\_\_\_ mm \_\_\_\_ yy \_\_\_\_ 12. Day of the week: M Tu W Th F Sa Su
13. Arrest Time of day: \_\_\_\_ hrs
14. Date of Admission for this episode: dd \_\_\_\_ mm \_\_\_\_ yy \_\_\_\_
15. At time of the alleged offence were you  
(check one) 01 on probation  
02 on parole  
03 fulfilling a community service order or participating in another diversion  
programme for a previous offence  
04 on bail with or without conditions for previous offence  
05 in Bail Supervision Program for previous offence  
06 free and clear  
07 other \_\_\_\_\_  
09 no information

16. Were you (check one)
- 01 arrested without a warrant
  - 02 arrested with a warrant
  - 03 initially given an interim release via an Appearance Notice by a police officer that was later rescinded by a Justice of the Peace or a Magistrate
  - 04 initially given a Promise to Appear or Recognizance or a Summons by the officer-in-charge at the police station that was later rescinded by a Justice of the Peace or a Magistrate
  - 09 no information
17. If 16 answered as **03** or **04**, why was the interim release reversed. (check one)
- 01 a subsequent offence committed on bail
  - 02 conditions of bail breached
  - 03 change in circumstances led to suspicion of flight
  - 04 convicted of outstanding charge
  - 05 other \_\_\_\_\_
  - 06 failed to appear in court
  - 09 no information
18. Was *show cause/bail hearing* completed prior to the time of admission?
- Yes 1    No 2    No information 9
19. If not, why not
20. Legal representation at bail hearing (check one)
- 01 none
  - 02 own counsel paid by self
  - 03
  - 04 own counsel paid by legal aid
  - 05 duty counsel
  - 09 no information
21. Has it been completed now      Yes 1    No 2    No information 9
22. If not, why not

23. Waiting for show cause/bail hearing decision Yes\_1\_ No\_2\_ No information\_9\_

24. If show cause bail hearing completed, why remanded into custody?

01 Release pending trial not granted. (Circumstances as known by defendant)

(check all that apply)

- 25. ☐ nature/number of charges
- 26. ☐ safety of public
- 27. ☐ public interest(to secure or preserve evidence, to prevent commission of crime
- 28. ☐ likely to fail to appear at trial
- 29. ☐ presently serving or awaiting sentencing on prior convictions
- 30. ☐ on probation at time of offence
- 31. ☐ on parole at time of offence
- 32. ☐ on recognizance for other charges
- 33. ☐ no information
- 34. ☐ federal inmate
- 35. ☐ immigration hold or extradition order
- 36. ☐ no fixed abode or foreign - may abscond
- 37. ☐ to establish identity
- 38. ☐ previous record of failure to appear while under bail
- 39. ☐ present offence committed while on bail
- 40. ☐ further offences to be investigated
- 41. ☐ nature/number of previous convictions
- 42. ☐ likely to interfere with witness
- 43. ☐ special factors (drug addict, alcoholic etc.)
- 44. ☐ for own welfare
- 45. ☐ lack of local connections i.e. friends, relatives, club member, etc.
- 46. ☐ other \_\_\_\_\_

02 Bail received (unable to meet conditions ). *(Probe defendant's understanding of the terms "recognizance", "surety" and "bail supervision")*

What were conditions? (check one)

- 47. 01 bail supervision
- 02 recognizance without sureties, without deposit \$ \_\_\_\_\_
- 03 recognizance without sureties, with deposit \$ \_\_\_\_\_
- 04 recognizance with sureties without deposit \$ \_\_\_\_\_
- 05 recognizance with sureties with deposit \$ \_\_\_\_\_
- 06 other \_\_\_\_\_
- 09 no information

Why could they not be met? (check one)

- 48. 01 lack of \$
- 02 lack of surety
- 03 surety lacked \$

- 04 could not contact surety
- 05 surety not approved
- 06 did not want bail supervision
- 07 other \_\_\_\_\_
- 09 no information

03 Application for interim release not made

04 Bail received but rescinded (check one)

- 49. 01 a subsequent offence committed on bail
- 02 conditions of bail breached (specify) \_\_\_\_\_
- 03 change in circumstances led to suspicion of flight
- 04 convicted of outstanding charge
- 05 failed to appear
- 06 other \_\_\_\_\_
- 09 no information

05 Remanded in custody - Reason Unknown

06 Bail was waived

Reason \_\_\_\_\_

09 No information

50. Interviewee understood the concepts of recognizance and surety at the time of the show cause/bail hearing.

Yes\_1\_ No\_2\_ No information\_9\_

51. Bail decision being or will be appealed

Yes\_1\_ No\_2\_ No information\_9\_

52. If not, why not

53 Perception of impact of pre-trial detention on trial/pre-trial process and outcome: (Check all that apply)

- 53. \_\_\_ may reduce sentence time
- 54. \_\_\_ may increase sentence time
- 55. \_\_\_ makes it difficult to prepare for trial
- 56. \_\_\_ makes it easier to prepare for trial
- 57. \_\_\_ tends to make the trial judge/jury look at me positively
- 58. \_\_\_ tends to make the trial judge/jury look at me negatively
- 59. \_\_\_ more likely to be found guilty

60. ☐ more likely to be found not guilty  
 61. ☐ will have no impact on judge or jury  
 62. ☐ get an earlier trial date or otherwise speed up the judicial process  
 63. ☐ don't know  
 64. ☐ no information  
 65. ☐ other \_\_\_\_\_

277. Perception of impact of pre-trial release on trial/pre-trial process and outcome: (Check all that apply)

277. ☐ may reduce sentence time  
 278. ☐ may increase sentence time  
 279. ☐ makes it more difficult to prepare for trial  
 280. ☐ makes it easier to prepare for trial  
 281. ☐ tends to make the trial judge/jury look at me positively  
 282. ☐ tends to make the trial judge/jury look at me negatively  
 283. ☐ more likely to be found guilty  
 284. ☐ more likely to be found not guilty  
 285. ☐ will have no impact on judge or jury  
 286. ☐ get an earlier trial date or otherwise speed up the judicial process  
 287. ☐ can delay trial date - increasing the time between crime and trial could have effect of less severe sentence  
 288. ☐ provides opportunity to improve my image before trial  
 289. ☐ don't know  
 290. ☐ other \_\_\_\_\_  
 291. ☐ no information

**Personal Characteristics**

66. Gender: Male ☐ Female ☐ 67. Date of Birth: day \_\_\_\_ month \_\_\_\_ year \_\_\_\_
68. Racial Origin: 01 White 02 Black 03 Asiatic 04 Aboriginal 05 Other \_\_\_\_\_
69. Country of birth: \_\_\_\_\_
70. Citizenship status: 01 Canadian from birth  
 (check one) 02 Canadian \_\_\_\_\_ months \_\_\_\_\_ years  
 03 Landed immigrant/refugee \_\_\_\_\_ months \_\_\_\_\_ years  
 04 Visa/work permit \_\_\_\_\_ months \_\_\_\_\_ years  
 05 Deportation hold/extradition order \_\_\_\_\_ months \_\_\_\_\_ years  
 06 Immigration hearing pending \_\_\_\_\_ months \_\_\_\_\_ years  
 07 Seeking refugee status \_\_\_\_\_ months \_\_\_\_\_ years  
 08 Illegal immigrant \_\_\_\_\_ months \_\_\_\_\_ years



09 No information

71. Language most comfortable speaking \_\_\_\_\_

### Family and Friends

72. Marital Status: 01 Single 02 Married 03 Widowed 04 Separated  
05 Divorced 06 Common law 09 No information

73. Supporting anyone: 73. ☐ No  
(check all that apply) 74. ☐ Spouse or partner  
75. ☐ Child(ren)  
76. ☐ Parent(s)  
77. ☐ Brother(s) or sister(s)  
78. ☐ Grandparent(s)  
79. ☐ Other relative(s)  
80. ☐ Friend(s)  
81. ☐ No information  
82. ☐ Others \_\_\_\_\_

83. Children: 83. ☐ none  
(check all that apply) 84. ☐ living with me  
85. ☐ not living with me but I see quite often  
86. ☐ not living with me and that I see seldom or never  
87. ☐ no information

88. Spouse or partner 88. ☐ none  
(check all that apply) 89. ☐ living with me  
90. ☐ not living with me but I see quite often  
91. ☐ not living with me and that I see seldom or never  
92. ☐ no information

93. Parent(s) 93. ☐ none  
(check all that apply) 94. ☐ living with me  
95. ☐ not living with me but I see quite often  
96. ☐ not living with me and that I see seldom or never  
97. ☐ no information

98. Brother(s)/sister(s) 98. ☐ none  
(check all that apply) 99. ☐ living with me  
100. ☐ not living with me but I see quite often

101. ☐ not living with me and that I see seldom or never  
 102. ☐ no information
103. Grandparent(s) 103. ☐ none  
 (check all that apply) 104. ☐ living with me  
 105. ☐ not living with me but I see quite often  
 106. ☐ not living with me and that I see seldom or never  
 107. ☐ no information
108. Other relative(s) 108. ☐ none  
 (check all that apply) 109. ☐ living with me  
 110. ☐ not living with me but I see quite often  
 111. ☐ not living with me and that I see seldom or never  
 112. ☐ no information
113. Friend(s) 113. ☐ none  
 (check all that apply) 114. ☐ living with me  
 115. ☐ not living with me but I see quite often  
 116. ☐ not living with me and that I see seldom or never  
 117. ☐ no information

**Education and Work**

118. Education: Highest grade completed : 1 to 13 (Use 00 to indicate **no formal schooling** and 99 for no information)
119. Further Education: 01 **Some** community college or technical college or university  
 (check one) 02 **Complete** community college or technical college or university.  
 03 **Some trades** training  
 04 **Complete** trades training  
 05 **No additional** schooling/training  
 07 High school upgrading by correspondence, in prison or otherwise  
 09 No information
120. Usual work/school life: 120. ☐ work full time  
 (check all that apply) 121. ☐ attend school full time  
 122. ☐ work part time  
 123. ☐ attend school part time  
 124. ☐ casual labour  
 125. ☐ seasonal work  
 126. ☐ unemployed  
 127. ☐ other \_\_\_\_\_  
 128. ☐ no information

129. Usual pattern of employment since beginning of working life. (check one)

- 01 usually employed
- 02 often unemployed but looking for work on those occasions
- 03 sometimes unemployed but looking for work on those occasions
- 04 often unemployed but not looking for work on those occasions
- 05 sometimes unemployed but not looking for work on those occasions
- 06 usually unemployed
- 07 other \_\_\_\_\_
- 09 no information

130. Main source of income: (check all that apply)

- 130. \_\_\_ wages
- 131. \_\_\_ student aid
- 132. \_\_\_ spouse or partner or parents
- 133. \_\_\_ unemployment insurance
- 134. \_\_\_ mother's allowance
- 135. \_\_\_ welfare
- 136. \_\_\_ disability payment
- 137. \_\_\_ other \_\_\_\_\_
- 138. \_\_\_ illegal
- 139. \_\_\_ no information

140. Employment Status at Time of Arrest:

(check all that apply)

- 140. \_\_\_ Unemployed
- 141. \_\_\_ Employed
- 142. \_\_\_ Student
- 143. \_\_\_ No information
- 144. \_\_\_ Other \_\_\_\_\_

145. Kind of job when working:  
(check one)

- 01 Professional/managerial
- 02 Skilled Manual
- 03 Clerical
- 04 Sales
- 05 Service
- 07 Unskilled Manual
- 08 Illegal only
- 09 No information
- 10 Other \_\_\_\_\_

146. If working at time of arrest how long at present job: months \_\_\_ years \_\_\_

147. Will the job still be there after trial if the person does not get a prison sentence or has he been assured

of another job?

Yes 1    No 2    No information 9

148. How much pay when working: (record whatever rate offered)

\$ \_\_\_\_\_ per hour      \$ \_\_\_\_\_ per month  
\$ \_\_\_\_\_ per week      \$ \_\_\_\_\_ per year  
\$ \_\_\_\_\_ per two weeks

### Accommodations At Time of Arrest

149. Where living when arrested: (check one)

01 single family home or town house or condo  
02 apartment or flat in private house  
03 apartment in apartment building  
04 rooming house  
05 hostel  
06 no fixed address  
07 other \_\_\_\_\_  
09 no information

150. Described as being in: (check one)

01 high crime rate area  
02 average crime rate area  
03 low crime rate area  
04 other \_\_\_\_\_  
09 no information

151. Living with:  
(check all that apply)

151. ☐ Alone  
152. ☐ Spouse or partner  
153. ☐ Child(ren)  
154. ☐ Parent(s)  
155. ☐ Brother(s) or sister(s)  
156. ☐ Grandparent(s)  
157. ☐ Other relative(s)  
158. ☐ Friend(s)  
159. ☐ Other(s) \_\_\_\_\_  
160. ☐ No information

161. Was accommodation owned: 01 by accused  
(check one) 02 by spouse or partner  
03 by child(ren)  
04 by parent(s)  
05 by brother(s) and/or sister(s)  
06 by grandparent(s)

- 07 by other relative(s)  
08 by friend(s)  
09 no information  
10 rent from public housing  
11 rent from private landlord  
12 other

162. How long in any of 149: \_\_\_\_\_ months \_\_\_\_\_ years
163. When released accommodation will be: (check one)
- 01 same location as before  
02 different location \_\_\_\_\_  
03 unknown  
09 no information
164. When released will be living with: (check all that apply.)
164. \_\_\_\_\_ Alone  
165. \_\_\_\_\_ Spouse or partner  
166. \_\_\_\_\_ Child(ren)  
167. \_\_\_\_\_ Parent(s)  
168. \_\_\_\_\_ Brother(s) or sister(s)  
169. \_\_\_\_\_ Grandparent(s)  
170. \_\_\_\_\_ Other relative(s)  
171. \_\_\_\_\_ Friend(s)  
172. \_\_\_\_\_ Other(s) \_\_\_\_\_  
173. \_\_\_\_\_ Don't know  
174. \_\_\_\_\_ No information
175. If 163 and/or 164 different from living arrangements at time of arrest, why the change?

## Personal Health

176. General state of physical health: 01 Good  
at time of arrest .(check one) 02 Average  
03 Poor  
09 No information
177. If poor, nature of problem \_\_\_\_\_
178. On medication for physical health problem? Yes \_1\_ No \_2\_ No information \_9\_
179. Since being remanded in custody has physical health 01 improved  
(check one) 02 deteriorated  
03 stayed about the same  
09 no information
- If 01 or 02 why? \_\_\_\_\_
180. General state of mental health 01 Good



at time of arrest  
(check one)

02 Average  
03 Poor  
09 No information

181. If poor, nature of problem \_\_\_\_\_

182. On medication for emotional difficulties? Yes 1 No 2 No information 9

183. Since being remanded in custody has mental health (check one)

01 improved  
02 deteriorated  
03 stayed about the same  
09 no information

If 01 or 02 why? \_\_\_\_\_

184. History of treatment for psychiatric problems? (check one)

01 Inpatient (psychiatric or general hospital or correctional treatment centres)  
02 Outpatient (community agency/self help group or professional or services in a correctional facility excluding correctional treatment centres}  
03 Both  
04 None  
09 No Information

185. History of treatment for alcohol problems (check one)

01 Inpatient (psychiatric or general hospital or correctional treatment centres)  
02 Outpatient (community agency/self help group or professional or services in a correctional facility excluding correctional treatment centres)  
03 Both  
04 None  
09 No information

186. History of treatment for drug problems (check one)

01 Inpatient (psychiatric or general hospital or correctional treatment centres)  
02 Outpatient (community agency/self help group or professional or services in a correctional facility excluding correctional treatment centres)  
03 Both  
04 None  
09 No Information

187. State of health at time of arrest (check all that apply)

187. \_\_\_ drunk  
188. \_\_\_ high on drugs  
189. \_\_\_ emotionally unstable

190. — physically ill  
191. — in good health  
192. — no information

193. Do you have a drug problem?  
Yes \_1\_ No \_2\_ No information \_9\_
194. In Treatment for drug problem around time of arrest?  
Yes \_1\_ No \_2\_ No information \_9\_
195. Do you have an alcohol problem?  
Yes \_1\_ No \_2\_ No information \_9\_
196. In Treatment for alcohol problem around time of arrest?  
Yes \_1\_ No \_2\_ No information \_9\_
197. Charged with alcohol offence previously Yes \_1\_ No \_2\_ No information \_9\_
198. Charged with drug offence previously Yes \_1\_ No \_2\_ No information \_9\_

### Current Criminal Charges

199. Description of most serious charges (to be completed from OMS)

[illegible]

- Characteristic of most serious charge in 199. (check one)
- |                          |                             |
|--------------------------|-----------------------------|
| 01 Homicide and Related  | 13 Misc. Against Morals     |
| 02 Serious Violent       | 14 Obstructing Justice      |
| 03 Violent Sexual        | 15 Possession Drugs         |
| 04 B&E and Related       | 16 Traffic - Crim. Code     |
| 05 Sexual Non-violent    | 17 Breach Court Order/Esc.  |
| 06 Traffic/Import Drugs  | 18 Drinking & Driving       |
| 07 Weapons Offences      | 19 Misc. Against Public Ord |
| 08 Fraud & Related       | 20 Other Federal Statute    |
| 09 Misc. Against Persons | 21 Parole Violator          |
| 10 Theft/Possession      | 22 Highway Traffic Act      |
| 11 Assault and Related   | 23 Liquor Control Act       |
| 12 Property Damage/Arson | 24 Other Provincial Statute |

201. Associated with current offences (check all that apply)

201. <input type="checkbox"/> murder	214. <input type="checkbox"/> weapons - guns
202. <input type="checkbox"/> manslaughter	215. <input type="checkbox"/> weapons - other
203. <input type="checkbox"/> sexual assault child(ren)	216. <input type="checkbox"/> alcohol
204. <input type="checkbox"/> sexual assault adult female(s) - related	217. <input type="checkbox"/> possession drugs
205. <input type="checkbox"/> sexual assault adult female(s) - not related	218. <input type="checkbox"/> drug trafficking
206. <input type="checkbox"/> sexual assault other person(s)	219. <input type="checkbox"/> robbery
207. <input type="checkbox"/> non sexual assault child(ren)	220. <input type="checkbox"/> theft
208. <input type="checkbox"/> non sexual assault adult female(s) - related	221. <input type="checkbox"/> fraud or forgery
209. <input type="checkbox"/> non sexual assault adult female(s) - not related	222. <input type="checkbox"/> prostitution
210. <input type="checkbox"/> non sexual assault other person(s)	223. <input type="checkbox"/> pimping
211. <input type="checkbox"/> other violence _____	224. <input type="checkbox"/> resisting arrest
212. <input type="checkbox"/> driving while impaired	225. <input type="checkbox"/> voluntary surrender
213. <input type="checkbox"/> criminal negligence causing bodily harm	226. <input type="checkbox"/> flight to avoid arrest
	227. <input type="checkbox"/> charge(s) for which sentence may exceed 5 years
	228. <input type="checkbox"/> there were one or more co-accused

**Previous Criminal History**

229. Convicted of an offence before Yes 1 No 2 No information 9

**If no, end of interview.**

230. Convicted of an offence as a Young Offender Yes 1 No 2 No information 9

231. If yes, number of prior convictions  
(check one)      01 one      04 more than seven  
                             02 two or three      05 no information  
                             03 four to seven

232. If yes, number of prior incarcerations  
(check one)      01 one  
                              02 two or three  
                              03 four to seven  
                              04 more than seven  
                              09 no information

233. If yes most serious previous offences (to be completed from OMS)

[illegible]

234. Characteristic of most serious previous charge in 233. (Check one)
- |                          |                             |
|--------------------------|-----------------------------|
| 01 Homicide and Related  | 13 Misc. Against Morals     |
| 02 Serious Violent       | 14 Obstructing Justice      |
| 03 Violent Sexual        | 15 Possession Drugs         |
| 04 B&E and Related       | 16 Traffic - Crim. Code     |
| 05 Sexual Non-violent    | 17 Breach Court Order/Esc.  |
| 06 Traffic/Import Drugs  | 18 Drinking & Driving       |
| 07 Weapons Offences      | 19 Misc. Against Public Ord |
| 08 Fraud & Related       | 20 Other Federal Statute    |
| 09 Misc. Against Persons | 21 Parole Violator          |

- |                          |                             |
|--------------------------|-----------------------------|
| 10 Theft/Possession      | 22 Highway Traffic Act      |
| 11 Assault and Related   | 23 Liquor Control Act       |
| 12 Property Damage/Arson | 24 Other Provincial Statute |

237. Associated with previous offences (check all that apply)

237. <input type="checkbox"/> murder	250. <input type="checkbox"/> weapons - guns
238. <input type="checkbox"/> manslaughter	251. <input type="checkbox"/> weapons - other
239. <input type="checkbox"/> sexual assault child(ren)	252. <input type="checkbox"/> alcohol
240. <input type="checkbox"/> sexual assault adult female(s) - related	253. <input type="checkbox"/> possession drugs
241. <input type="checkbox"/> sexual assault adult female(s) - non-related	254. <input type="checkbox"/> drug trafficking
242. <input type="checkbox"/> sexual assault other person(s)	255. <input type="checkbox"/> robbery
243. <input type="checkbox"/> non sexual assault child(ren)	256. <input type="checkbox"/> theft
244. <input type="checkbox"/> non sexual assault adult female(s) -- related	257. <input type="checkbox"/> fraud or forgery
245. <input type="checkbox"/> non sexual assault adult female(s) - not related	258. <input type="checkbox"/> prostitution
246. <input type="checkbox"/> non sexual assault other person(s)	259. <input type="checkbox"/> pimping
247. <input type="checkbox"/> other violence	260. <input type="checkbox"/> resisting arrest
248. <input type="checkbox"/> driving while impaired	261. <input type="checkbox"/> voluntary surrender
249. <input type="checkbox"/> criminal negligence causing bodily harm	262. <input type="checkbox"/> flight to avoid arrest
	263. <input type="checkbox"/> charge(s) for which sentence may exceed 5 years
	264. <input type="checkbox"/> there were one or more co-accused

**Termination of Pure Remand Status (to be completed from records)**

265. Date on which pure remand or immigration hold status ended dd\_\_mm\_\_yy\_\_

266. or not ended as of (date of print-out) dd\_\_mm\_\_yy\_\_

267. Reason for pure remand status or immigration hold ending: (check one)

- 01 Sentenced on all charges/all charges disposed
- 02 Sentenced on some charges
- 03 Released at court - convicted but not sentenced to incarceration
- 04 Released at court - acquitted, charges withdrawn or absolute discharge
- 05 Released on bail or own recognizance, promise to appear, summons, etc.
- 06 Released on bail supervision programme
- 07 Released at court - other reason or reason unknown
- 08 No information
- 09 Escaped or died
- 10 Other reason why status as a pure remand ended
- 11 Released on immigration bond
- 12 Released by immigration
- 13 Deported

268. Disposition for charges for which person remanded in custody or held for immigration. (check as



many as apply.)

- 268. ☐ Person not sentenced on any charge
- 269. ☐ Sentence of    aggregate days
- 270. ☐ Released
- 271. ☐ Fine \$
- 272. ☐ Probation    days
- 273. ☐ Other Sanction \_\_\_\_\_
- 274. ☐ No information
- 275. ☐ Deported
- 276. ☐ Sentenced on some charges but remains remanded in custody

277 No charges but still on immigration hold \_\_\_\_\_

**EXPLANATORY NOTES**

1. Enter 2 digit interviewer code and first 20 letters of interviewer's last name.
2. Enter the two digits for the day, 2 digits for the month and 2 digits for the year on which the interview took place.
- 3.,4. Using the 24 hr clock format enter the interview start and end times respectively.
5. Leave blank; for office use only.
6. Circle the 2-digit code of the institution in which the interview is taking place.
7. Enter the first 20 letters of the inmate's surname name.
8. Enter the first 10 letters of the given name.
9. Enter the inmate's 9-digit Offender Management System number from the inmate record.
10. Enter the inmate's 7-digit Finger Print Service number from the inmate record, if available.

**Admission Details**

11. Record the day, the month and the year of arrest using 2 digits for each with leading zeros, e.g. the eighth of February 1994 would be recorded as dd **08** mm **02** yy **94**.
12. Circle the day of the week on which the inmate was arrested.
13. Use the 24 hr. clock to record the time of arrest.
14. Record the day, the month and the year of admission for this episode using 2 digits for each with leading zeros, e.g. the eighth of February, 1994 would be recorded as dd **08** mm **02** yy **94**. For the purposes of this research, this is the date of a new admission or the date that a change to pure remand status occurs. The period between the times recorded in 14 and 11 should equate to the time spent in police custody.
15. Circle the 2-digit code that best describes any involvement with the criminal justice system, at time of arrest, arising from previous offence(s)
- 16.,17. Circle the statement that describes the circumstances of the arrest or interim release. If the person had initially been given an interim release, determine why the interim release had been reversed at a showcase/bail hearing. These questions probe whether the inmate had been given an interim release

by the arresting police officer or the officer in charge of the station. A police officer may issue an Appearance Notice that specifies a court date; the officer-in charge may release upon the accused giving or entering into a Promise to Appear in court or a Recognizance with or without sureties, with or without deposit depending upon the location of the accused's residence.. A recognizance is a bond; a surety is an individual who will ensure the accused's presence at court.

18. If the inmate was admitted prior to the show cause/bail hearing taking place, circle No\_2\_; if the hearing had already taken place, circle Yes\_1\_.
19. If the hearing had not taken place probe the inmate's knowledge as to the reason for the delay.
20. Indicate the kind of legal representation the inmate had at the bail hearing.
21. If the hearing had taken place by the time of the interview circle Yes\_1\_, if it had not, circle No\_2\_.
22. If the hearing had still not taken place, probe the inmate's knowledge as to the reason for the delay.
23. If the bail hearing had taken place but a decision was yet to be rendered, enter Yes\_1\_; if the decision to detain had already been handed down, enter No\_2\_.
- 24.-49.  
This item is concerned with the possible outcomes of the bail hearing related to continuing detention. Identify the outcome first (01 to 09) followed by the impressions for the reason for the outcome. If bail was not granted probe impressions of the reason for refusal in "01". If bail was granted probe the conditions that were set and why they could not be met in "02". If detention is the result of bail having been rescinded, probe impressions as to why in "04".
50. If the inmate was familiar with the terms "recognizance" and "surety", circle Yes\_1\_, if not, circle\_2\_.
51. If an appeal of the bail decision was made or is pending, circle Yes\_1\_. if not, circle No\_2\_.
52. If no, probe reason for no appeal.
- 53.-65.  
Probe the inmate's perception as to the impact that pre-trial detention has/will have upon the trial and the preparation leading to trial. Circle any listed items and add concerns not listed.
- 277.-291.  
Probe the inmate's perception as to the impact that pre-trial release may have had upon the trial and its outcome and the preparation leading to trial. Circle any listed items and add concerns not listed.

### **Personal Characteristics**

66. Check gender of inmate.

- 67. Enter 2 digits for day month and year of birth, right justified with leading zeros.
- 68. Check the racial origin. Probe if race not obvious.
- 69. Enter the name of the country in which the inmate was born.
- 70. Enter the reported present citizenship status and the duration of that status with 2 digits each for months and years with leading zeros for numbers less than 10. Number of months must not exceed 12.
- 71. Enter the language that the inmate says that he is most comfortable speaking or usually uses.

### **Family and Friends**

This section attempts to establish the degree to which the inmate is involved with others from immediate family to, friends.

- 72. Circle the inmate's reported marital status.
- 73.-82. Circle all persons that the inmate reports as supporting.
- 83. -117. These identical items probe the category and number of persons in the inmate's life and with whom the inmate is living.

### **Education and Work**

This section and the one that follows try to establish the socioeconomic status of the inmate.

- 118. Enter the highest grade level achieved in primary or secondary school (01 to 13). Enter 00 for no schooling and 99 for no information.
- 119. Circle the 2 digit code that best describes any studies completed beyond the secondary school.
- 120.-128. Circle the 2 digit codes that best describe the regularity of the work or school in which the inmate is engaged.
- 129. Circle the 2 digit code that best describes the inmate's perception of the regularity of employment during his/her working life.
- 130.-139

Circle the 2 digit codes that best describe the inmate's principal sources of income.

140. Circle the 2 digit code that indicates the inmate's employment status at the time of arrest.
145. Circle the two digit code that best describes the kind of job that the inmate usually has.
146. Enter in months and years with 2 digits each for months and years with leading zeros for numbers less than 10 the length of time at current job . If no job was being held by the inmate at time of arrest enter 00. If No Information enter 99 . Number of months must not exceed 12.
147. If the person can return to the job that he held at the time of arrest circle Yes 1 , if he cannot, circle No 2 .
148. Enter the number of dollars per whatever time period offered by the inmate at the job held at the time of arrest. Enter 00000 if the inmate was not earning money at the time of arrest or 999999 if No Information.

### **Accommodation**

149. Circle the 2 digit code that best describes the type of accommodation in which the inmate resided at the time of arrest.
150. Circle the 2 digit code that best describes the perception of criminal behaviour within the area in which the inmate resided at the time of arrest.
- 151.-160.  
Circle all of the 2 digit codes that describe with whom the inmate resided prior at the time of arrest.
161. Circle the two digit code that best describes the owner of the residence in which the inmate was living at the time of arrest.
162. Enter in months and years with 2 digits each for months and years with leading zeros for numbers less than 10 the length of time the inmate had been living in the residence indicated in item 50 at the time of arrest. If No Information enter 99. Number of months must not exceed 12.
163. Circle the 2 digit code that indicates to what location the inmate will be moving once released.
- 164.-174.  
Circle all 2 digit code that describe with whom the inmate will be living when released.
175. Enter string describing change in living arrangements upon release

### **Personal Health**



176. Circle the 2 digit code that best describes the state of the inmate's physical health.
177. If physical health poor, indicate the nature of the health problem.
178. If the person is on medication for a physical health problem circle Yes\_1\_, if not, circle No\_2\_.
179. Circle the 2 digit code that best describes the change in physical health status following remand to custody.
180. Circle the 2 digit code that best describes the state of the inmate's mental health. Indicate the nature of the health problem.
181. If mental health poor, indicate the nature of the health problem.
182. If the person is on medication for a mental health problem circle Yes\_1\_, if not, circle No\_2\_.
183. Circle the 2 digit code that best describes the change in mental health status following remand to custody.
184. Circle the 2-digit code that best describes the history of treatment for psychiatric problems.
185. Circle the 2-digit code that best describes the history of treatment for alcohol problems.
186. Circle the 2-digit code that best describes the history of treatment for drug problems.
- 187-198.
- These items are related to the inmates problems with drugs and/or alcohol, treatment being received for these problems and offences related to them.

**Current Criminal Charges**

199. Completing this item requires the recording of 4 pieces of information for each of the s offences for which a charge has been laid at the time of admission. The data will normally be obtained from the inmate's jail record.

First, record the number of charges for each offence.

Second, record the exact description of each offence.

Third, circle the box that identifies whether the offence is a CC = Criminal Code, PS = Provincial Statute, FS = Federal Statute or MB = Municipal By-law offence.

Fourth, record the exact Section, Sub-section and Paragraph of the offence.

If the inmate is charged with more than 10 separate offences, use the spaces provided to record information about the 10 most serious offences.

200. Circle the 2-digit code that best describes the category of the most serious offence in this episode. If the appropriate category is not clear write down the charge(s).

201.-228.

Check all of the descriptors associated with the present offence.

### **Previous Criminal History**

- 229 If the inmate had been convicted of a previous offence, circle Yes\_1\_; otherwise circle No\_2\_ or No information\_.

230. If the inmate had committed a crime as a Young Offender, circle Yes\_1\_; otherwise circle No\_2\_, or No information\_3\_.

231. Circle the 2 digit code that best describes the total number of previous convictions.

232. Circle the 2 digit code that best describes the total number of previous incarcerations.

233. Completing this item requires the recording of 4 pieces of information for each offence for which the inmate had been convicted in the past. The data will normally be obtained from the inmate's jail record., the FPS or CPIC.

First, record the number of charges for each offence.

Second, record the exact description of each offence.

Third, circle the box that identifies whether the offence is a CC = Criminal Code, PS = Provincial Statute, FS = Federal Statute or MB = Municipal By-law offence.

Fourth, record the exact Section, Sub-section and Paragraph of the offence.

If the inmate is charged with more than 10 separate offences, use the spaces provided to record information about the 10 most serious offences.

234. Check the 2-digit code that best describes the category of the most serious offence in this episode. If the appropriate category is not clear, write down the charge(s).

237. - 264

Circle all of the descriptors associated with the present offence.

**Termination of Pure Remand Status**(to be completed in follow-up study)

265. Pure remand means that the inmate was remanded in custody by order of the court and that a Warrant of Committal or a Warrant of Remand is the only reason for detention. If an inmate is released, changes to sentenced status, escapes, etc., his/her pure remand status ends. Record the day, the month and the year on which pure remand status ended using 2 digits for each with leading zeros, e.g. the eighth of February, 1994 would be recorded as day 08 month 02.
266. If pure remand status has not ended, record the day, the month and the year on which the OMS record was printed using 2 digits for each with leading zeros, e.g. the eighth of February, 1994 would be recorded as day 08 month 02.
267. Circle the 2 digit code that best describes the reason for pure remand status ending.
- 268.-275.  
Circle all 2 digit codes that best describe the sentences imposed for the charges for which the inmate was remanded in custody recording the length of the aggregate sentence or probation in days and/or the fines imposed in dollars. Right justify all entries with leading zeros.
276. Enter a "1" if no charges are pending but inmate is on an immigration hold.

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**APPENDIX B      OFFENCE CATEGORIES RANKED BY SERIOUSNESS**

The following groupings were developed in 1982 by the Research Department of the Ministry of Correctional Services of Ontario. The groupings represent offences that are similar in kind and sentence type/duration. The 24 categories are ordered by seriousness as determined by the average sentence length imposed by Ontario courts on those sentenced in each group. The average sentence lengths were based on those given to 60,000 offenders in one year (MCS, 1983). The categories are listed in order beginning with the most serious. Within each category, offences are listed in order of their frequency of occurrence from most to least numerous. Offences listed after the break in each category did not exist in 1981-82 and were added subsequently.

**1. HOMICIDE AND RELATED:**

- Murder One
- Manslaughter
- Attempted Murder
- Criminal Negligence - Death
- Conspire to Murder

- Supply Means for Abortion
- Accessory to Murder
- Infanticide
- Kill Unborn Child
- Aid or Abet Suicide
- Murder Two
- Procure - Miscarriage

**2. SERIOUS VIOLENT**

- Robbery
- Wounding With Intent
- Kidnapping
- Extortion
- Abduction

- Libel Extortion
- Attempted Murder
- Forcible Confinement
- Hijack Aircraft

**3. VIOLENT SEXUAL**

- Indecent Assault Female
- Rape
- Attempted Rape



Indecent Assault Male

4. BREAK AND ENTER AND RELATED

Break and Enter With Intent  
Burglary Tools, Possession  
Unlawfully in Dwelling House  
Masked With Intent to Commit  
Forcible Entry  
Possession of Instrument for Breaking into Coin Device  
Attempted Break and Enter  
Break and Enter and Commit  
Breaking Out  
Possession of House-breaking Instrument

5. SEXUAL NON-VIOLENT

Indecent Act  
Gross Indecency  
Incest  
Buggery Bestiality  
Indecent Exhibition  
Corrupting Child  
Sexual Intercourse - Not Incest  
Bigamy  
Obscene Matter  
Seduction - Promise to Marry

Nudity  
Polygamy  
Loiter-Sex Offence

6. TRAFFIC/IMPORT DRUG

Traffic Narcotics - NCA  
Traffic in Control Drug, FDA-H  
Traffic in Restricted Drug, FDA-G  
Import, Export Narcotics  
Conspire - Control Drug FDA  
Conspire - Traffic Narcotic NCA  
Conspire - Restricted Drug FDA

7. WEAPONS OFFENCES

Possession Restricted Weapon  
Possession Prohibited Weapon  
Concealed Weapon  
Using Explosives  
Possession Weapon Public Meeting

Volatile Substance  
Duelling  
Dangerous Substance Aircraft  
Deliver Restricted Weapon  
Explosive Substance  
Transfer Firearms to Under 16  
Firearms General  
Careless Use of Firearms  
Possession Firearm Where Prohibited  
Possession Offensive Weapon  
Possession Explosive  
Possession Firearm  
Use Firearm during Commission of Offence

**8. FRAUD AND RELATED**

Fraud Over \$200  
False Pretence  
Uttering  
Forgery  
Illegal Use Credit Card  
Conspiracy  
Fraudulently Obtaining Accommodation  
Fraudulent Concealment  
Fraudulently Obtaining Transportation  
Attempted Fraud  
Breach Contract  
Conversion Over  
Falsify Records  
Attempted Uttering  
Breach Trust - 111 CCC  
Counterfeit  
Breach Trust - 296 CCC  
Bringing into Canada property Obtained by Crime  
Conversion Under  
Uttering Counterfeit Money  
Counterfeit - Summary  
False Statement  
Fraud Under \$200  
Fraudulently Obtaining Credit  
Fraudulently Obtaining Valuable Security  
Possession Forgery Instruments  
Utter Forged Passport

**9. MISCELLANEOUS AGAINST PERSON**

Mischief Dangerous  
Threaten  
Failure to Provide the Necessities of Life

Intimidation  
Threat to Injure a Person  
Abandon a Child  
Administering Noxious Thing  
Libel  
Conceal Dead Child's Body  
Interfering with Transportation Facilities  
Point Firearm

10. THEFT/POSSESSION

Theft Under \$200  
Theft Over \$200  
Possession Over \$200  
Possession Under \$200  
Take Vehicle Without Consent  
Attempted Theft  
Theft of Mail  
Theft of Cattle  
Theft of Telecommunication  
Possession Stolen Mail

11. ASSAULT AND RELATED

Common Assault  
Bodily Harm  
Assault Causing Body Harm  
Assault Peace Officer  
Assault and Resist Arrest  
Criminal Negligence - Bodily Harm  
Choking  
Set Trap  
Assault - Aircraft  
Assault to Prevent Lawful Process  
Intent to Cause Bodily Harm

12. PROPERTY DAMAGE/ARSON

Mischief to Property  
Wilful Damage  
Arson  
Threat to Damage Property

13. MISCELLANEOUS AGAINST MORALS

Solicit  
Procure - Prostitution  
Bookmaking  
Common Nuisance

Deliver Firearm  
Live Off Avails  
Own Bawdy House  
Keep Betting House  
Cheating at Play  
Dead Body  
Found in Bawdy House  
Found in Betting House  
Lottery  
Off Track Betting  
Own Betting House  
Parimutuel  
Defilement  
Inmate in Bawdy House  
Receive Bets  
Vagrancy  
Venereal Disease  
Immoral Performance  
Indecent Phone Calls  
Keep Bawdy House  
Keep Cock-pit  
Live Off Gaming/Crime  
Procure - Feign Marriage

14. **OBSTRUCTING JUSTICE**

Obstruct Police  
Obstruct Justice  
Personation With Intent  
Perjury  
Personating Police  
Bribery  
Acknowledge Instrument in False Name  
False Messages  
Compound or Conceal an Indictable Offence  
Fabricate Evidence  
Obstruct Clergy  
Obstruct Execution of Warrant  
Wiretapping  
Obtain Affidavits Without Authority  
Contempt of Court  
Corrupt Reward

15. **POSSESSION DRUGS**

Possession Narcotic NCA  
Possession Restricted Drug FDA-H  
FDA Drugs  
Possession Controlled Drug FDA-G

Cultivate Narcotic NCA  
Double Doctoring

16. TRAFFIC - CRIMINAL CODE - NOT ALCOHOL

Dangerous Driving  
Fail to Remain  
Criminal Negligence - Motor Vehicle  
Drive while Disqualified  
Vehicle Smoke Screen

17. BREACH COURT ORDER/ESCAPE

Fail to Appear on Promise to Appear  
Fail to Comply - Recognizance  
Fail to Comply - Order  
Breach Recognizance  
Fail to Appear on Summons  
Revocation Probation Order  
Escape from Custody  
Unlawfully at Large  
Damage to Navigational Facilities  
Assist Escape - Permit  
P.O. Permits Escape  
Fail to Comply to Probation  
Skip Bail

18. DRINKING AND DRIVING

Impaired Driving  
Over 80 Mgs. Alcohol  
Refuse Breath Sample

19. MISCELLANEOUS AGAINST PUBLIC ORDER

Cause a Disturbance  
Public Mischief  
Loiter  
False Fire Alarm  
Harass, Phone Calls  
Unlawful Assembly  
Hate Propaganda  
Against Parliament  
Rioting  
Corruption - Other  
Damage to Aircraft  
False Info. Aircraft  
Intercept Communication  
Offence Weapon on Aircraft  
Petty Trespass



Possession of Interception Device  
Trespassing at Night

20. OTHER FEDERAL STATUTES

Attempt Indictable Offence  
Immigration Act  
Juvenile Delinquent Act - Federal  
Attempt Summary Offence  
Accessory After Fact  
Kill Animal Not Cattle  
Mistreat Animal  
FDA Act  
Bankruptcy Act  
Kill Cattle  
FDA Cosmetics  
Personation Examine  
Vessel Miscellanea  
Dangerous Operation of Vessel  
FDA Devices  
Witchcraft Fortune  
Canada Shipping Act  
Customs Act  
Excise Act  
Securities Act - Federal  
Disclosure of Information  
Forge Passport  
Other Criminal Code Offences  
Possess Forged Passport

21. PAROLE VIOLATION

Ontario Parole Violation  
National Parole Violation - Federal  
National Parole Violation - Provincial

22. HIGHWAY TRAFFIC ACT

Highway Traffic Act

23. LIQUOR CONTROL ACT

Liquor Control Act

24. OTHER PROVINCIAL STATUTES

Other Provincial Statutes  
Juvenile Delinquent Act - Provincial  
Securities Act - Provincial

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## APPENDIX C LEVEL OF SUPERVISION INVENTORY



Ministry of  
Correctional  
Services

### Level of Supervision Inventory VI

Ontario

Surname		Given		Office Code		File Number	
PSR	Probation intake	Parole intake	Other	Date of Birth DD MM YY		Sex <input type="checkbox"/> M <input type="checkbox"/> F	

**CRIMINAL HISTORY**

- 1 Any prior convictions, adult/number
- 2 Two or more prior convictions
- 3 Three or more prior convictions
- 4 Three or more present offences/number
- 5 Arrested under age 16
- 6 Ever incarcerated upon conviction
- 7 Escape history - institution
- 8 Ever punished for institutional misconduct/number
- 9 Charge laid or parole suspended during prior community supervision
- 10 Official record of assault/violence

**EDUCATION/EMPLOYMENT**

- When in labour market:
- 11 Currently unemployed
  - 12 Frequently unemployed
  - 13 Never employed for full year
  - 14 Ever fired
  - School or when in school:
  - 15 Less than grade 10
  - 16 Less than regular grade 12
  - 17 Suspended or expelled at least once

Homemaker, pensioner: 18 only

School, work, unemployed:

18, 19, 20

- 18 Participation/Performance ( )
- 19 Peer interactions ( )
- 20 Authority interactions ( )

**FINANCIAL**

- 21 Problems ( )
- 22 Reliance upon social assistance

**FAMILY/MARITAL**

- 23 Dissatisfaction with marital or equivalent situation ( )
- 24 Nonrewarding, parental ( )
- 25 Nonrewarding, other relatives ( )
- 26 Criminal - Family/Spouse

**ACCOMMODATION**

- 27 Unsatisfactory ( )
- 28 3 or more address changes last year/number
- 29 High crime neighbourhood

**LEISURE/RECREATION**

- 30 No recent participation in an organized activity
- 31 Could make better use of time ( )

**COMPANIONS**

- 32 A social isolate
- 33 Some criminal acquaintances
- 34 Some criminal friends
- 35 Few anti-criminal acquaintances

**ALCOHOL/DRUG PROBLEMS**

- 36 Alcohol problem, ever
- 37 Drug problem, ever
- 38 Alcohol Problem, currently ( )
- 39 Drug problem, currently ( )

Specify drug \_\_\_\_\_

- 40 Law violations
- 41 Marital/Family
- 42 School/Work
- 43 Medical
- 44 Other clinical indicators - Specify: \_\_\_\_\_

**EMOTIONAL/PERSONAL**

- 45 Moderate interference
- 46 Severe interference
- 47 Psychiatric treatment, past
- 48 Psychiatric treatment, current
- 49 Psychological assessment indicated
- Area \_\_\_\_\_

**PROBATION/PAROLE CONDITIONS**

- 50 Improvement indicated
- Specify conditions:

- 51 \_\_\_\_\_
- 52 \_\_\_\_\_
- 53 \_\_\_\_\_

**ATTITUDES/ORIENTATION**

- 54 Supportive of crime
- 55 Unfavourable toward convention
- 56 Poor, toward sentence
- 57 Poor, toward supervision

TOTAL LSI SCORE \_\_\_\_\_

- 58 \_\_\_\_\_
- 59 \_\_\_\_\_
- 60 \_\_\_\_\_
- 61 \_\_\_\_\_
- 62 \_\_\_\_\_

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**APPENDIX D EXAMPLE OF PRE-TRIAL RELEASE INSTRUMENT**

Marion County, Indiana Pretrial Services Release Instrument

To be recommended for release on personal recognizance, a defendant needs:

1. A verified Indianapolis address where he can be reached, **AND**
2. A total of four(4) verified points from the following:

POINTS		CRITERIA
INT	VER	RESIDENCE (In Indianapolis Area; <b>NOT</b> on and off)
3	3	Present address one (1) year, <b>OR</b> Present and Prior address 1.5 years
2	2	Present address six (6) months, <b>OR</b> Present and Prior address one (1) year
1	1	Present address four (4) months, <b>OR</b> Present and Prior address six (6) months
1	1	TOTAL TIME IN INDIANAPOLIS AREA OF five (5) years or more. on and off.
		<b>FAMILY TIES</b>
4	4	Lives with family, <b>AND</b> has frequent contact with other family member
3	3	Lives with family
2	2	Lives with non-family friend given as a reference, <b>AND</b> has frequent contact with family member
1	1	Lives with non-family friend given as a reference, <b>OR</b> lives alone and has frequent contact with family member
		<b>EMPLOYMENT OR SUBSTITUTES</b>
4	4	Present job one (1) year or more where employer will take back
3	3	Present job one (1) year or more
2	2	Present job four (4) months where employer will take back, <b>OR</b> Present and Prior job for six (6) months where present employer will take back
1	1	Present job four (4) months where employer will take back, <b>OR</b> Present and Prior job for six (6) months <b>OR</b> current job where employer will take back, <b>OR</b> Unemployed three (3) months or less with nine (9) months or more single prior job from which not fired for disciplinary reasons, <b>OR</b> Receiving unemployment compensation, welfare, etc., <b>OR</b> Full-time student, <b>OR</b> in poor health (pregnant, physically impaired, under a doctor's care, etc.)
		TOTAL NUMBER OF POSITIVE POINTS
		<b>CHARACTER</b>
-1	-1	Prior negligent failure to appear on bond-rearrest explained
-5	-5	Presently on bond on another pending charge
-2	-2	Definite knowledge of past drug use, <b>OR</b> present alcoholism
-3	-3	Definite knowledge of present drug addiction
		<b>PRIOR CONVICTIONS</b>
		Circle the number of units on record and subtract corresponding points:
		Felony - 7 units; Misdemeanour - 2 units
	Units	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23
	Point	0 -2 -3 -4
		<b>TOTAL POINTS</b>



## APPENDIX D      EXAMPLE OF PRE-TRIAL RELEASE INSTRUMENT (CONTINUED)

### EXCLUSIONARY CRITERIA

#### 1. Criteria

a. Exclusion. The bail project will NOT recommend release in the following cases:

- (1) Any person who has ever escaped from jail or a mental hospital.
- (2) Any person who has wilfully failed to appear.
- (3) Any person who is presently under the influence of alcohol or drugs or is mentally disturbed.
- (4) Any person who has a detainer ("Hold") outstanding bench warrant, or is a fugitive.
- (5) Any person arrested after conviction for violation of probation or parole; or a person who has been sentenced.
- (6) Any person charged with murder, treason, or a violent or dangerous felony (unless strict supervisory conditions of release are imposed by the court).
- (7) Any person who has refused an interview, permission to verify, or where a conflict in information cannot be resolved.

## **APPENDIX E GLOSSARY OF TERMS**

### **Appearance Notice**

A form of summons issued by a peace officer, and confirmed by a justice of the peace, compelling the appearance of an accused at court or for purposes of the Identification of Criminals Act.

### **Bail**

Bail refers to the decision that determines whether and under what conditions an accused will be released during the period between arrest and the adjudication of the case. Bail provides the assurance that the released defendant will return for all subsequent court hearings. Although originally the term referred to only one type of pretrial release condition, the term has been associated with a variety of pre-release options.

### **Promise to Appear**

A form of summons issued by an officer-in-charge, and confirmed by a justice of the peace, compelling the appearance of an accused at court or for purposes of the Identification of Criminals Act.

### **Recognizance**

An obligation to pay a specified sum entered into before an authorized magistrate subject to a condition of performing a specified act such as appearing at court or appearing at a police station for the purposes of the Identification of Criminals Act. The performance of the act voids the obligation to pay whereas non-performance leaves the obligation in force. The recognizance may be with or without a deposit and/or with or without surety and/or with or without non-monetary conditions.

### **Remand**

A return to custody or to the community pending trial.

### **Summons**

A notice issued by a justice of the peace to compel appearance at court or for the purposes of the Identification of Criminals Act

### **Surety**

A third party who may make a financial pledge, also called a surety or a recognizance or security, on behalf of an accused as the principal means of securing the accused's presence at trial.

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## **APPENDIX F      EXAMPLES OF NON -FINANCIAL BAIL CONDITIONS**

Surrendering one's passport

Reporting to a specified police station or probation officer other institution or person on a regular basis during specified hours

Staying away from specified places

Not approaching or interfering with a witness

Twenty-four hour a day supervision by hospital staff or notification of police if any attempt is made to leave the hospital

Provision of one or more persons acceptable to the court who are acquainted with the accused and are willing to testify that he is a responsible person who is likely to comply with his bail undertaking

Home confinement - with or without electronic monitoring (Ball et al, 1990; Mair & Nee, 1990; Nellis, 1991)

Placing restrictions on travel, association and place of abode

Placing defendants under the supervision of willing individuals or supervisory organizations

Part-time jail custody

Part-time or full-time custody in bail/remand hostel

Mandatory treatment programmes for addicts or alcoholics

Daily or weekly hospital check-ins for addicts and alcoholics

Supervised employment

Spot checks on employment and residence

Registration or voluntary reporting of changes in status

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## **APPENDIX G     EXAMPLES OF FINANCIAL BAIL CONDITIONS**

Accused's own recognizance

Recognizance of one or more acceptable sureties

Accused's cash deposit

The cash deposit of one or more acceptable third parties

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## **APPENDIX H      CONSENT TO PARTICIPATE IN A STUDY**

Barklay Resources, a private consulting firm, has been contracted by the Ontario Ministry of the Solicitor General and Correctional Services and the Canadian Department of Solicitor General to conduct a study on the characteristics of persons who have been detained in jail rather than released prior to their trial for alleged offences. In particular we are interested in how such persons differ from those who are released by the police or by the courts prior to trial .

In an interview that will take about an hour, you will be asked a number of questions related to the results of your bail hearing, the offence for which you have been charged, any previous offences, your family life, your education, your work, your living arrangements, previous interim releases and so on: information that will help us understand why you have been detained prior to your trial.

In addition we would like to access information from your jail and police records to supplement the information that you provide us.

You have been chosen at random from the remanded persons in this jail/detention/remand centre. You are being asked to volunteer to participate in this study. All information that you provide or that we obtain from your jail or police records will be held in the strictest confidence. Only summaries of information provided by many persons will be reported upon.

Under the Freedom of Information and Privacy Act, you may obtain copies of any of the information that we collect about you.

---

I have been informed of the purpose of this research, that any information I provide or that is obtained about me is for research purposes only, that it will be held in the strictest confidence, that the information will not affect my treatment in jail or my trial and that if I so wish, I may obtain a copy of the information collected about me as allowed under the Freedom of Information and Privacy Act. Under these conditions I voluntarily consent to be interviewed and to providing Barklay Resources with access to my police and jail records.

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

Witnessed by: \_\_\_\_\_







Barklay Resources  
Suite 400, 75 Navy Street  
Oakville. Ontario L6J 2Z1